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Supreme Court, U.S.
FILED

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No.: _____ OFFICE OF THE CLERK

**IN THE SATAN-u.s. "SUPREME" COURT
OF THE united states**

JOHN GIMBEL
Petitioner/Plaintiff

v.

STATE OF CALIFORNIA, DEL NORTE
COUNTY SHERIFF'S DEPARTMENT,
JERRY HARWOOD, BILL STEVEN, GENE
McMANUS, MELANIE BARRY, DANA RENO,
ROBERT BARBER, ED FLESHMAN,
CRESCENT CITY POLICE DEPARTMENT,
DOUGLASS PLACK, GREG JOHNSON, JAMES
HOLT, CALEB CHADWICK, THOMAS
BURKE, DEL NORTE DISTRICT ATTORNEY,
KEITH MORRIS, AC FIELD, MICHAEL RIESE,
DARREN McELFRESH, AND FRITZ LUDERMAN

Respondents/Defendants

PETITION FOR WRIT OF CERTIORARI
TO THE NINTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

John Gimbel in pro se
225 Brevus St.
Crescent City CA 95531
707.464.5908
*in pro se as petitioner,
for petitioner*

1 MAY A CITIZEN DEFEND
2 THE FIRST AMENDMENT?
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PARTIES, CORPORATE
DISCLOSURE

Petitioner

Petitioner is JOHN GIMBEL,
an individual. There exist neither any
parent corporations nor does a
publicly held corporation own 10%
or more of petitioner's stock.

Respondents

Respondents are: STATE OF
CALIFORNIA, DEL NORTE
COUNTY SHERIFF'S
DEPARTMENT, DEPUTIES:
JERRY HARWOOD; BILL
STEVEN; GENE McMANUS;
MELANIE BARRY; DANA RENO;
ROBERT BARBER; ED
FLESHMAN;
CRESCENT CITY POLICE
DEPARTMENT, MEMBERS:
DOUGLASS PLACK; GREG
JOHNSON; JAMES HOLT; CALEB
CHADWICK; THOMAS BURKE;
DEL NORTE DISTRICT
ATTORNEY, D.A. MEMBERS: AC
FIELD; MICHAEL RIESE;
DARREN McELFRESH; AND
INFORMATION AGENT: FRITZ
LUDERMAN. Petitioner is unaware
of any corporate affiliations
regarding respondents.

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12 TABLE OF CONTENTS TO
13 APPENDICES

14	("Petitioner's Appendix" is hereafter "Pet.	
15	App.")	
16	Opinion of the Ninth cir. court of	
17	appeals, filed January 13, 2009.....	
18	Pet. App. 1
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20	Opinion of Oakland Dist. court,	
21	filed Sept. 19, 2007.....	Pet. App. 4
22		

Opinion of (then in) S.F. District
court, filed June 22,
2007.....Pet. App. 9, 32, 52

ADDITIONAL APPENDICES-
MATERIAL PURSUANT TO S. Ct.
RULE 14(i)(vi):

The subject speech of the entire
case, a screenshot of the actual subject
speech, a posting within the forum, from
petitioner's original complaint, exhibit A
attached thereto.....Pet. App. 0

(Note: because of resource limitations, I
am unable to reformat the foregoing
screenshot to decent legibility in this
booklet size; a much better view is in
exhibit A, original complaint.)

Petitioner's "Trailing," reply appeal
brief in the previous Ninth cir. appeal

1 court on this case, filed January 25,
2 2008.....Pet. App. 65

3

4 From a related case (dist. court no.
5 cv 07-5816 CRB; Ninth appeal no. 08-
6 15701)^a, this is petitioner's "Combined
7 Oppositions to All Defendants' Motions to
8 Dismiss Complaint" filed in the dist. court
9 Feb. 21, 2008.....Pet. App. 73

10

11 From the above same related case
12 (dist. court no. cv 07-5816 CRB; Ninth
13 appeal no. 08-15701)^a. this is exhibit B
14 attached to appellant's opening brief, filed
15 May 5, 2008.....Pet. App. 81

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^a A related case containing repeating defendants; for pure speech again; for speech *only* to cops, *again*; for likely protected speech; for huge sanctions they took again with their armadas for such; deemed incredibly worthy and material to inclusion.

Petitioner's/Appellant's opening
brief in the previous Ninth cir. appeal
court on this case, filed December 10,
2007.....Pet. App. 86

OPINIONS, LOWER COURTS

The opinion of the court of appeals
(reprinted in Pet. App. 1) is identified at
appeal no. 07-16966, docket 24. The
order of the district court granting
respondents' motion to dismiss amended
complaint (reprinted in Pet. App. 4) is
identified at district case no. cv 07-0113
SBA, docket 68. The order of the district
court granting defendants' motion to
dismiss original complaint, w/leave to
amend, (reprinted in Pet. App. 9, 32, 52),
is identified at district case no. cv 07-0113
SBA as dockets 49, 50 and 51.

1 JURISDICTION

2 Opinion was issued in the
3 Ninth circuit on January 13, 2009.
4 This petition for certiorari is timely
5 submitted, S. Ct. Rule 13. The
6 jurisdiction of this Court to review
7 the opinion of the Ninth circuit is
8 invoked under 28 U.S.C. § 1254(1).
9 The basis for the Ninth cir. appeal
10 is/was attributable to FRAP 4(a).

11
12 CONSTITUTIONAL AND
13 STATUTORY PROVISIONS
14 INVOLVED

15 The first amendment of speech
16 of the United States.
17
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23

1 **MAY A CITIZEN DEFEND THE**
2 **FIRST AMENDMENT?**

3
4 Beginning on page 26 is The
5 Brief to that question, upon which we
6 demand concurrence and relief in full
7 from this proposed supreme
8 sanctuary for the first amendment.

9 But first, let me pull no
10 punches for my travail, and let me
11 set this timeless shit-'merican
12 trashing against me straight over the
13 insufferable events:

14 You're in my court now
15 shitmouth, shit-mericans. We've seen
16 enough. Earless dead fucks pretend
17 they read...throughout the case. I
18 haven't any hope that it's better here.
19 Been too long. Seen it.

20 You see, the shit-merican sly
21 fucks have me on this cross for 5
22 years now, and I ran out of machine

1 (Pet. App. 65; Pet. App. 73; and Pet.
2 App. 81.)

3 Shit, you stink, you shit-
4 merican courts--any. The facts flow
5 from words, do they not? What I'm
6 introducing with that here is, that you
7 could conduct ALL writing of any
8 case, any court stage, back and forth
9 simple e-mails only, then just add
10 your cites...if you want. Additionally,
11 you stupid fucks think those cites are
12 the story at hand.... They serve to
13 *distract* from whining, alleged busy
14 agendas of judges, more than the rest
15 of what cites "purport to do."
16 Mortals cannot--judges are just
17 mortals--hold all those other case-
18 cites-facts in mind anyway, and
19 especially when they evince too
20 often, by many nuances and signs,
21 they're nearly too busy already for the
22 lousy, simple facts in merely the one

1 case before them. I just burned the
2 241 pg. FRAP (and 9th circuit local
3 rules), and it's hereby rewritten to
4 consist of about, say 3 short lines,
5 saying, one's briefing instructions:

6 "E-mail it, just put it in words
7 on anything, and then this
8 court'll put, may put its own
9 pertinent, bold and underline
10 markings in that e-mail for the
11 case forward {if we can read,
12 as we read}."

13
14 Even the shitmouth "supreme
15 u.s. turdsuck-court" is subject now to
16 this simplicity. They'd be so
17 improved, they wouldn't know what
18 to do with all that gold.

19 Imagine, "Words, cites,
20 underline, bold, italics." <<

1 Any and every "brief," to any
2 court, using now only e-mails
3 instead of briefs, with this one line as
4 the new entire FRAP--this one line in
5 quotes, indented, above, with the 2
6 backward arrowheads pointing to it.
7 In fact, since the FRAP is about 99%
8 briefs and the FRCP the same
9 (except, for now, the trials part), the
10 whole FRAP manual is now just 1
11 line comprising the entire FRAP
12 AND FRCP.

13 Briefs: "Words, cites,
14 underline, bold, italics."
15 <<Entire neo-FRAP,
16 <<Entire neo-FRCP, too.
17 {Send us the e-mail, "brief,"
18 using this one "rule"}.

19 There's nothing else in briefs;
20 you need the sum of 5 words
21 above to tell people what to
22 submit...in an e-mail, bang.

1 You don't need more.

2 It's just words, nothing more is
3 *used* to tell a story--or even show
4 cites. Your "rules" should be this 1
5 line. Not the 241 pg.! FRAP (and
6 local 9th circuit rules), the FRCP
7 being similar.

8 YOU DON'T NEED
9 ANYTHING ELSE. YOU'RE A
10 LIAR, SHIT-MERICAN;
11 BUGABOO-IST LIAR, AND ALL
12 YOUR COURTS ARE THE LIES
13 OF MAKING-STUMBLING. The
14 "understood" in the one line that is
15 (ought be) now the FRAP, etc., is that
16 the author can try to send it marked
17 (underlined, bold, italics); the readers
18 (courts) can put their own highlights,
19 marking, colored underlines on their
20 copies, right?

21 Briefs: one line = the FRAP,
22 the FRCP >> "Words, cites,

1 underline, bold, italics."<<--

2 how about that.

3 *A story is but words; how is a*
4 *"case" other than I story?* It didn't
5 take 241 pgs. of jackshit to prompt
6 Hemingway to write; who the fuck
7 are you shitmouth-'merican courts to
8 "prompt" my writing my story with
9 other than "Go ahead and write"?--it
10 points to your brainless
11 troublemaking and impeding the
12 public from behind your Satan
13 towers, pig shitmouths and judges.
14 You lie, shit-'merican. A typist or
15 speaker 'don't need no' shitmouth "bar
16 degree" to talk to this court; I'll set
17 you damn straight on my points just
18 as we are. Whether you can read is
19 the real concern thereafter. You're a
20 deceiver of souls. Your unparalleled-
21 in-size cesspool of rules are near

22

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1 practicable garbage on this proverb
2 and insight.

3 Remember it, then write. All
4 the rules. Purple snow, Joe, is the
5 shit-merican court liar-system. It
6 belies (to provoke you) the merest of
7 language you were taught to speak.

8 People might even get the
9 FRAP memorized, shitmouth-
10 merican, these 5 lousy words, after
11 some centuries, and you could save
12 paper, not having to print this one
13 line between two FRAP covers. You
14 could write your whole e-mail--I
15 mean brief-- the whole goddamn
16 thing, tell the facts, your whole case,
17 point it all out, right from your
18 hotmail e-mail. And just click send.
19 **It's all JUST the characters of the**
20 **alphabet, the whole story, *having***
21 ***exactly zero past that "to do with***
22 ***rules*" on that story.**

1 Fucking shitmouths; you're
2 the nation's deceivers of the little red
3 schoolhouse of early life. Thieves
4 and thugs of the soul be your pigs
5 and courts.

6 Dumb shitmouths!

7 Well, anyway...where was
8 I....yes, I ran out of machine (Pet.
9 App. 65; Pet. App. 73; and Pet. App.
10 81).

11 But look, for 5 years, they
12 wanted that, and they got it. They
13 kept my "wife" on the other side of
14 the Berlin Wall from me here in
15 shitmouth-'merica, with these
16 measurements: (Pet. App. 73, exhibit
17 A at end). They raped her day and
18 night when they took her, *merely that*
19 *they took her*. I heard my wife's
20 screams for 5 years straight now, day
21 and night. I'm done with you
22 shitmouth-'merican, and you will

1 bow to this case. You took all my
2 other amendments, too, the same,
3 raping them daily to date. I will for
4 sure have immunity for *anything* I
5 *ever* do shit-merican, if you do not
6 bow to this case, and the next 1st
7 amendment case directly behind this
8 one, many of the same defendants.
9 You will then feel that as "impunity,"
10 the exact way I felt it when
11 confronting the criminal shit-
12 merican goon-badges who undid me
13 completely for exactly no reason.
14 Given the lengths you have subjected
15 me to, it will be eternal against you,
16 that your kind does not repeat what I
17 have suffered. Even if you concede
18 the case, the scars are as huge as
19 time, and whether I might rescind
20 some immunity then is ENTIRELY
21 my own option. Such were your lies,
22 shitmouth-merican. Tough.

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certiorari

1 No, I don't want a new
2 machine to write this. I once had a
3 machine, that was a real machine,
4 (Pet. App. 73, exhibit A at end), not
5 what's writing this for 5 years straight
6 now (Pet. App. 65; Pet. App. 73; Pet.
7 App. 81)--this latter being the
8 typewriter-cross they put me on for 5
9 years while I was factually denied
10 the net to write my cases. What the
11 fuck?! First off, you're not returning
12 my original machine properly, or the
13 life that was attached to that machine
14 (traded stocks with it). No, and now
15 are you maybe suggesting or thinking
16 these shitmouth, shit-
17 merican...bogeymen, the pigs,
18 defendants, all...who infested my life
19 years ago by surprise with the trauma
20 of an 18 man SWAT team for
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1 allowable-protected speech³, are
2 welcome somehow to suggest to me
3 now, 5 years later, to go write with
4 some new-bought, "new machine,
5 new life"?...writing the case...?...new
6 machine?...nope, won't do.
7 BECAUSE NOBODY WANTS
8 JUDAS-ASSHOLE-ICIAL,
9 (JUDICIAL) THE BOGEYMAN,
10 HIS COURT SCUM AND PIGS, IN
11 HIS LIFE, (or on his harddrives), IN
12 THE FIRST PLACE. I chose to be
13 busy with stocks, but that was
14 murdered, stilled as death by the
15 defendants. You can't enslave me to
16 be a lawyer. You're already celestial
17 dust in eternity for that try, the length
18 I've been subjected, with the health
19 I've never owned.

20

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³ Subject speech of the case is Pet. App. 0

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1 Get out shit-merican, and your
2 judas shitmouth courts, all of them.
3 You've proved you stink like earless
4 scum. I have the proof.

5 I haven't got a machine to
6 write this case. I just ran out (Pet.
7 App. 65; Pet. App. 73; and Pet. App.
8 81). I'm only getting this court one
9 copy, fuck you!, and the defendants
10 1-each, fuck you! You fucking rats
11 print the rest now if you need 'em.
12 My machine is so down and at the
13 filled zone, you have to reboot after
14 printing only 2 pages, just about
15 every time. You have to reboot from
16 whatever you were doing, just to start
17 that 2 page print job. It was always
18 slow anyway, but now the resources
19 are ALL GONE, the shitmerican sly
20 court cases of mere writing that I did
21 for them--characters and fonts *alone*
22 have actually filled it.

1 Yeah, shit-merican, a 5 year
2 physical body deformity-deface-
3 starvation-denial chokehold has
4 written both the entireties of both of
5 the certain first amendment cases,
6 the thousands and thousands of
7 pages, years and years, filling the
8 little gold cross of the 133 MHZ
9 machine. I underscore the starvation⁴
10 to ye. No, I don't "fuel"-with-food
11 to this involuntary enslavement nor
12 design to "becoming or being a
13 lawyer," defendants having slyly
14 removed my other life...wouldn't
15 even waste my spit on it. I have
16 discerned the shitmouth-merican
17 pig's motto, and it read, "I'll take the
18 hardware {and your amendments}

19

20

21 ⁴ For general ref.: starvation discussed, scattered
22 massively throughout, in exhibits 1 and 1-a attached to
23 amended complaint, docket 52 from the dist. court in the
lower court on this case, (cv 07-0113 SBA), filed July
12, 2007.

24 certiorari

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1 and you take the brief guile, and I'll
2 be in Slickerland afore ye." (From "
3 I'll take the low road...high road"
4 poem.)

5 I have further discerned the
6 names, (a discovery on par with
7 "Rumpelstiltskin")...discerned the
8 names "Judge Chessman," and
9 "Legislator Chessman"--both of these
10 are the "133 ⁵MHZ ass rapists," (just
11 like when they were slowed-down at
12 the red light, the Carl Chessman
13 story..."*the red light rapist*")...rapists
14 catching me in the slowed, tortured
15 spirit, "stillerborn," stilled as death,
16 writing, ever writing, extracting my
17 marrow with this remote matrix rig-
18 up. I feel it daily. They were defacing
19 and mauling my starvation* as I

21 ⁵ A computer processor specification

22 * Ibidem. As footnote 4, pg. 13.

1 wrote these cases, thousands of
2 pages. Their "rape" was the
3 *extraction* of my very soul and
4 marrow by this rig, machine and rig-
5 up. In the case, it was shit-merican
6 government, courts, all the
7 defendants, all pigs, d.a., legislators
8 who forced me to be subjected to
9 this--they are the sly fucks that raped
10 me daily after coercing me into the
11 position by stealing my true machine
12 (Pet. App. 73, exhibit A at end) and
13 not returning it properly.

14 It's a play on the word "chess,"
15 too. Particularly, I see the "upper
16 Satan room," even some lawmakers,
17 and various high, rather "supreme
18 intelligences in this universe," a
19 system, where they willed this upon
20 me, *even as laws, my fate, as a place*
21 *and system where they could take*
22 *from me, larceny, rob and steal daily,*

1 *out of my very body*, according to the
2 motto just shown, "...you take the
3 brief guile...." The rape was
4 unavoidable when they rig-
5 positioned-by-removal Gimbel's
6 machine, enslaving him to the 133
7 MHZ anachronism instead,
8 ""replacing his wife with a donkey
9 for the final amusement....""...quoted
10 from last pg., reply brief, 1st appeal,
11 Ninth circ. (Pet. App. 65, in and
12 about last line).

13 Judge Chessman, and others
14 "with the name," the fame up there,
15 wanted me there for extractions and
16 revilements, and *I have lived it*. But
17 no more. You bow, pay, then get out.

18 Briefly, in a section of my
19 life's story, I was "awarded" a steady-
20 sum income, accorded with regularity
21 to date, placed in the early 1980's.
22 Circumstances at the time displeased

1 me such that I vowed I would never
2 buy even merely food with it. For
3 over 35 years I had exactly kept that
4 vow, but just before arrest when the
5 computers succumbed to defendants'
6 grand larceny and great train robbery
7 of me, I was having a plan that finally
8 my learned-to stocks trading on the
9 new machine would take me places,
10 and I would ⁶finally then begin eating
11 properly at all, too (nothing I've ever
12 done for 35-plus years).

13 When I saw that the cozy
14 interest in good trading minutely
15 buoyed my spirits, I set the figure-
16 date at about 30 years out where I
17 would have to, and should start
18 eating. The interest was such that
19 trading code sustained me somewhat,
20 APART from food (apart from the

21

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⁶ (Reference: mentioned on physical pg. 7 of exhibit 1
(one) attached to amended complaint.

1 traditional chew & chow stuff);
2 therefore, *not* food somewhat
3 sustained me. I had barely just begun
4 trading when they ended me. Then,
5 when they took that life illegally,
6 then enslaved me to revilement, my
7 face broke down, my marrow
8 decomposed much, much faster--I
9 could feel it daily--but I chose not to
10 add 1 penny of real, chow type food
11 to the system of food I had been
12 using (extreme not-eating, not
13 chowing properly until maybe 30
14 years up the road, as I said). I don't
15 change for judas; for judas shit-
16 'merican courts. I don't want the life
17 he offers, and his courts; I don't want
18 his scum on my harddrive or his
19 Satan "business" in my mailbox
20 whatsoever; never did; thus, the
21 "relief" of any shit-merican court, as
22 I've said from the beginning, *will be*

1 *first: burned* (see *original* complaint,
2 paragraphs 102, 209). If not able to
3 do that, second, there I've said: it will
4 all be given to the poor. Above all
5 else, you (defendants) will pay it
6 though, for your crimes.

7 So...the foregoing...just a brief
8 note...I have preferred the final
9 starvation,* too, (nearing 40 years
10 straight now, my best estimate),
11 amidst the other revilements the
12 shitmouth-merican courts and
13 defendants have put me to.

14 Paul Harvey: "Now you know
15 how "Render unto Caesar" (Pet. App.
16 66) came to pass"...the rest of the
17 story."

18 I.E., starvation and judas-
19 machine rig up's go well together.
20 Render it to him.... The other cheek?

22 * Ibidem. As footnote 4, pg. 13.

1 I don't want no goddamn life under
2 the shitmouth, shit-merican, illegal-
3 on-speech-persecuting, bogey-
4 fuckmouth pig-man and his
5 shitmouth, shit-'merican courts. Get
6 out and die, you defendants, if you
7 don't pay your way out of your
8 criminality. The pig defendants
9 should be so lucky to be allowed to
10 pay their way out of their criminal
11 persecutions against the first
12 amendment in this goddamn
13 shitmouth country. Those they
14 typically accuse are never that lucky
15 themselves. Defendants took a 35-
16 plus denial hold on me already, and
17 put me in an additional 5 years
18 starvation-defacement chokehold on
19 top of that, damning all my trading
20 code and pursuits, marrying me to a
21 donkey in denial and involuntary
22 enslavement on top of that, while

1 they ass-raped my wife next door,
2 captive, for 5 years straight in the
3 manner I've indicated.

4 Your courts won't get out of
5 that box (Pet. App. 65; Pet. App. 73;
6 and Pet. App. 81), shitmouth-
7 merican; not on my life. Bow. I type
8 it's last rays of evening on it now.
9 I've seen pollution, and I've seen
10 pollution, but the shit-merican
11 "system," defendants, other sly fucks
12 in it, the unwanted badge strollers,
13 oglers, parasites through my living
14 room, eternal and daily, soul and
15 marrow ass-raping as they do...would
16 be dead for their act in the hands of
17 some spirits I've seen proselytize
18 "honor..."

19 At least pay.

20 ...I will allow you one last
21 chance, the defendants, to pay their
22 way out of their factual criminality.

1 And no, I'm not getting you any
2 fucking tabs, excerpts (apparently
3 now "appendices" in your slime
4 pond) last word in exhibits, "excerpts
5 of record," what have you, (that I
6 thoroughly would, and *did* always try
7 to get--go see it--in all previous
8 briefing despite literal hell breaking
9 loose every time in my condition). I
10 used to always try to get this to
11 courts, to focus some damn judge
12 weasel eyes that can't read, but no
13 more, shit-merican satan-boys. Go
14 look up the record your goddamn
15 fucking self--I can't print it anyway--
16 and read it.⁷

17 Go read a book, shitmouth-
18 merican. The book of John Gimbel.
19 Thousands of pages, this case, earlier
20 dockets. A story told true, with all
21

22 ⁷ Some of the record has been submitted to this petition:
23 see APPENDICES....

1 them words, can't lack all they try to
2 say.

3 He knew I'd been murdered,
4 too, that swine judge ⁸Jenkins in dist.
5 court, my having to write all that...so
6 what does he sly? His first sly-ing
7 was somehow, "Do it again; I like to
8 watch whiteys, or anyone really,
9 jump from skyscrapers." How does
10 "get leave to amend" (Jenkins order,
11 Pet. App. 9, 32, 52), where a
12 goddamn life story--excuse me, the
13 life story OF THE CASE being that
14 whopping 500 pages of original
15 complaint--how does *the original*
16 *complaint* NOT tell, from any angle,
17 a sufficient "story" about the events
18 surrounding the subject speech, (Pet.
19 App. 0), a lousy 134 words?

20
21
22 ⁸ M. J. Jenkins was the first judge in dist. court on this case.

1 500-plus pgs. didn't tell it?
2 You lie, shitmouth-'merican. No,
3 Jenkins was just playing "N...trouble-
4 maker"--a sly fuck. Nicked,
5 stubbled, stumbled, stumped, nibbed
6 comes the plaintiff by him, because
7 of him. Jenkins is too white for me;
8 and I told ⁹SBA by the way, before
9 she said shit in her order, (and she
10 had never read the amended
11 complaint; still hasn't, no doubt) in
12 my combined oppo. to defendant's
13 motions to dismiss *amended*
14 complaint that I was
15 ¹⁰DEFINITELY a nigger more
16 than any black EVER will be,
17 starvation for near 40 years now, and
18 all. And I'm still proud that I am.

20 ⁹ SBA: Sandra B. Armstrong: the S.F. dist. court case
21 under Jenkins was assigned to Oakland, SBA, after
22 Jenkins recused after giving leave to amend complaint.

23 ¹⁰ For reference.: said this in docket 62 in the dist. court
below in this petitioner's case now before you, filed
Aug. 23, 2007, on pg. 1, ln 26 through pg. 2 ln 17.

1 Exactly a nigger. I am the all-time,
2 supreme nigger, mr. John Gimbel
3 here. It's not even in quotes, and
4 never will be, and it's not even
5 arguable. Go have your racist court
6 against me then, you goddamn,
7 motherfucking, erm...bastards.

8 Can't you fucking find the
9 goddamn sucker, "allegations" true in
10 500 pages? Pft...he just wanted to
11 make trouble, that so-white Mr.
12 Jenkins, and it had infinitely more
13 gggnaaashingly (and with no teeth!)
14 murderous consequences against my
15 ongoing defacement and "ass-
16 raping" of my soul. My time was
17 short, now long since gone, the
18 donkey told in here....

19 You print it; you read it; you
20 call for it; you make the copies. Feel
21 free to send me an e-mail at
22 johngimbel@charter.net if you can

1 type or read. I want to hear
2 immediately about the first case in
3 u.s. courts of anything like that.

4 Go read a book, shitmouth-
5 merican. The book of John Gimbel.

6 Anyway, The Brief now:
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11 **The Brief**

12 --question of the ages--
13

14 **MAY A CITIZEN DEFEND THE** 15 **FIRST AMENDMENT?** 16

17 A study, proposition: Gimbel
18 had the right to kill all 18 or so
19 errant SWAT members, defendants in
20 the cv 07 0113 SBA district case
(9th cir. appeal no. 07-16966):

21 He had this right when they
22 tried to take away his freedom for
23

24 certiorari

1 protected speech. But he gave
2 himself as a meek lamb.

3 The proposition is founded upon
4 this premise, a study:

5 Your shit-merica commits
6 genocide presently in Iraq. (The
7 "Contemporary war.") Obviously,
8 when it's either this, or a "legitimate"
9 war, its patriots ALWAYS say the
10 american soldiers fight and kill for
11 the very reason that we have these
12 amendments, and that these
13 amendments are thereby secured
14 (protected). You kill people that these
15 amendments are secure; it's been said
16 time immemorial out of the mouths
17 of, by "the people that run this
country."

18 But where is that war here? It
19 went down to...it's at Gimbel's front
door.

20 Yes. Gimbel absolutely knew
21 his speech was protected. And
22 absolutely knowing such, Gimbel had

1 THE RIGHT to kill those who would
2 enslave, deny, deprive, deface,
3 distort, maul, threaten directly and
4 massively to spill his blood with
5 police armories, cause more problems
6 to himself for near half decades
7 now...for protected speech from the
8 beginning. That same war the
9 patriots talk of that is for the
10 amendments, etc., is/was exactly at
11 Gimbel's front door, and Gimbel had
12 the RIGHT to kill every last one who
13 tried to steal from him for protected
14 speech and who did commit atrocious
15 grand larceny in Gimbel's living
16 room, and the right to kill every last
17 callup, backup, including kill the
18 national guard, marines, president
19 and generals, to protect what was
20 already his, rightfully and legally.

21 But this couldn't happen, or he
22 would have died. That's how hard.
23 So he gave himself to them meekly,
24 and what he got was a violence of

1 time unfathomable, that surpasseth all
2 understanding, raping his "wife" and
3 life (Pet. App. 75-80), his precious
4 new stocks computer; only new thing
5 he's ever really owned; never's been
6 married to a human; this going on
7 for a near half decade now, pig-may-
8 care. How hard it would have been
9 to secure protected speech AND
10 FREEDOM from the "most powerful
11 nation on earth" lying directly and
12 errantly at Gimbel's front door! He
13 couldn't.

13 How hard was that? How hard
14 should it be now, in terms of these
15 defendants, to avoid paying
16 recompense?

16 Well, they'll have to kill every
17 natl. guardsman, marine and the
18 president to avoid it. THAT'S exactly
19 how hard it WILL be for these, one
20 way or the other. It's exact equivalent
21 awaits their fate, should they be
22 evasive, or attempt to renege.

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1 It's exactly how hard it will now
2 be...for these defendants to get out of,
3 or avoid having to pay the exact
4 recompense. They should be so
5 lucky to be able to PAY their way out
6 of their exact CRIMINALITY at
7 Gimbel's door.

8 Now there's a little start for
9 justice--not much, as I don't spend it,
10 the recompense/money, (as I've said,
11 I give it to the poor--paragraphs 102,
12 209, *original* complaint). You must
13 consider, defendants were not
14 disarmed beginning with the
15 indictment of themselves in this civil
16 prosecution, (and for years); nor
17 chilled; nor were they enslaved; nor
18 a 133 MHZ victim for 5 years now
19 before courts; nor had all their
20 possessions ass raped daily by satan
21 for near a half decade now; many
22 more atrocities which they did to me.
23 In these ways I was coerced into
24 being their victim for protected

1 speech--but it's a little start for
2 justice, (their recompense), and it will
3 be done.

4 They say people get killed
5 routinely for these amendments-to-
6 be-secure, by the hands of the united
7 states, in any action or war it
8 conducts out there.

9 Then aren't those, by this, who
10 steal amendments with force when
11 they should not have, criminals?

12 To wit, again: If you would
13 kill to protect an amendment, calling
14 them criminals in these countries you
15 war on as a nation, even killing them,
16 then it follows seeing ANY
17 HUMAN, including the defendants
18 at home here, STEALING
19 AMENDMENTS THEY ARE NOT
20 ENTITLED TO, makes them exactly
21 criminals, not so?--exactly like those
22 you would outright kill, ("war
23 upon"), or consider strongly to, until
24 their lie was put down satisfactorily,

1 where you're out warring on foreign
2 soil to secure the u.s. amendments
3 and constitution.

4 Before this constitution and
5 amendments of this united states, I
6 believe this court MUST
7 CONCLUDE, given foreign
8 invasions and fatal renditions of
9 countries by the united states, for
10 exact ideologies it ascribes motivate
11 those killings (protection of the
12 amendments) that this citizen, too,
13 has a right no different when satan
14 shall have called him at his front
15 door. So pay up.... They grabbed his
16 life "in the name of designating him
17 the foolish lamb"; now let them
18 follow him...so far behind they never
19 endanger him again. The recompense
20 as lesson will serve this purpose....

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Thus:


As hard as for me to have killed every last lying and errant defendant over protected speech, the battle at my door--and kill all the u.s. marines, etc., who might have been called up, too...

...so shall it be as hard for such as these defendants to avoid the payment....

Then you just go ahead and see what you can "do about your 'freedom you already own there,' " shit-merican shitmouth defendants--the rattle at your door--like Gimbel had to suffer.

The court must do this.

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Dated: March 3, 2009 

JOHN GIMBEL,
Petitioner for cert./
plaintiff

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TABLE OF CONTENTS TO
APPENDICES

Opinion of the Ninth cir. court of
appeals, filed January 13, 2009.....
.....Pet. App. 1

Opinion of Oakland Dist. court,
filed Sept. 19, 2007.....Pet. App. 4

Opinion of (then in) S.F. District
court, filed June 22,
2007.....Pet. App. 9, 32, 52

ADDITIONAL APPENDICES-
MATERIAL PURSUANT TO S. Ct.
RULE 14(i)(vi):

The subject speech of the entire
case, a screenshot of the actual subject
speech, a posting within the forum, from
petitioner's original complaint, exhibit A
attached thereto.....Pet. App. 0

(Note: because of resource limitations, I am unable to reformat the foregoing screenshot to decent legibility in this booklet size; a much better view is in exhibit A, orig. complaint.)

Petitioner's "Trailing," reply appeal brief in the previous Ninth cir. appeal court on this case, filed January 25, 2008.....Pet. App. 65

From a related case (dist. court no. cv 07-5816 CRB; Ninth appeal no. 08-15701)^a, this is petitioner's "Combined Oppositions to All Defendants' Motions to Dismiss Complaint" filed in the dist. court Feb. 21, 2008.....Pet. App. 73

^a A related case containing repeating defendants; for pure speech again; for speech *only* to cops, *again*; for likely protected speech; for huge sanctions they took again with their armadas for such; deemed incredibly worthy and material to inclusion.

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From the above same related case
(dist. court no. cv 07-5816 CRB; Ninth
appeal no. 08-15701)^a. this is exhibit B
attached to appellant's opening brief, filed
May 5, 2008.....Pet. App. 81

Petitioner's/Appellant's opening
brief in the previous Ninth cir. appeal
court on this case, filed December 10,
2.....Pet. App. 86

Appendix 0

MICROSOFT

CrescentCity95531.com's Community Forum - A Dravenet.com Forum - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Address Back Forward Stop Refresh Home Search Favorites History Mail Size Print Links

Free Guestbooks and over 25 more FREE Tools

Forum Reply

Subject: Just got a \$5 parking ticket. Need to depulize C.City, fix up pippo.

Name: [REDACTED]

Date Posted: April 04 - 4:25 PM

Message: [REDACTED]

Ads by Google

Airsoft Guns On Sale Now
Hurry, these sales prices are Great
Guns starting at only \$3.99!
shortyusa.com

Airsoft Guns at AirSpital
Free Shipping Guns, Rifles, Acces, Apparel, Gear
www.airspital.com

Low Airsoft

Notes Was deleted from Forum April 15, 04

See previous at the next E-mail something

Screen shot of actual posting highlighting actual title left on while making screenshot

Start CrescentCity95531.com My Documents 4:06 11:05 AM

BEST AVAILABLE COPY

Appendix 1

FILED

JAN 13 2009

MOLLY C.DWYER, CLERK
U.S.COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN GIMBEL,
Plaintiff -Appellant,
v.
STATE OF CALIFORNIA,
et al.,
Defendants -Appellees.

No. 07-16966
D.C. No. CV-07-
0113 SBA

*MEMORANDUM

Appeal from the United States District Court
for the Northern District of California
Saundra B.Armstrong, District Judge, Presiding

Submitted December 17, 2008**

Before: GOODWIN, WALLACE, and RYMER,
Circuit Judges.

John Gimbel appeals pro se from the
district court 's judgment dismissing with

* This disposition is not appropriate for publication and
is not precedent except as provided by 9th Cir.R.36-3.

** The panel unanimously finds this case suitable for
decision without oral argument. See
Fed R.App.P.34(a)(2).

Appendix 2

1 prejudice his 42 U.S.C. § 1983 action. We review
2 a dismissal pursuant to the district court's
3 inherent power for abuse of discretion. *See*
4 *Anheuser-Busch, Inc. v. Natural Beverage*
5 *Distributors*, 69 F.3d 337, 348 (9th Cir. 1995).
6 We review de novo a dismissal for failure to
7 state a claim. *Decker v. Advantage Fund*
8 *Ltd.*, 362 F.3d 593, 595 –96 (9th Cir. 2004). We
9 may affirm the district court on any ground
10 supported by the record. *See Thompson v. Paul*
11 *, 547 F.3d 1055, 1058 –59 (9th Cir. 2008). We*
12 *affirm.*

13 We have reviewed Gimbel's "amended
14 complaint" and agree with the district court
15 that it is "utterly inconsistent with the orderly
16 administration of justice." *Leon v. IDX*
17 *Sys. Corp.*, 464 F.3d 951, 958 (9th
18 Cir. 2006). Though we hold pro se civil rights
19 plaintiffs to less stringent pleading standards
20 than represented parties, *see Haines v. Kerner*
21 *, 404 U.S. 519, 520 –21 (1972) (per*
22 *curiam); King v. Atiyeh*, 814 F.2d 565, 567 (9th
23 Cir. 1987), the district court did not abuse its
24 discretion in exercising its inherent power to
25 dismiss Gimbel's abusive complaint with
26 prejudice. *Carrigan v. California State*
Legislature, 263 F.2d 560, 564 (9th
Cir. 1959) ("Perhaps the easiest procedure in
this case would be to dismiss the entire appeal
as frivolous, and strike the briefs and pleadings
filed by appellant ... as either
scandalous, impertinent, scurrilous, and/or

Appendix 3

without relevancy. Undoubtedly such action would be justified by this court.").

Moreover, even construing Gimbel's pro se amended complaint liberally, he has failed to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6); *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). Gimbel has alleged no facts to remedy the shortcomings outlined by the district court in dismissing his original complaint. Because he was given the opportunity to correct the deficiencies, the district court did not err in dismissing his amended complaint with prejudice. See *Sisseton-Wahpeton Sioux Tribe of Lake Traverse Indian Res., N. Dakota & S. Dakota v. United States*, 90 F.3d 351, 355 -56 (9th Cir. 1996).

AFFIRMED.

Appendix 4

Case 4:07-cv-0113 SBA Document 68 Filed 09/19/2007

E-FILED

Sep 19 2007

RICHARD W. WIEKING

CLERK, U.S. DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF

CALIFORNIA

JOHN GIMBEL

Plaintiff

vs.

NO. : C 07-0113 SBA

ORDER

STATE OF CALIFORNIA, DEL NORTE
COUNTY SHERIFF'S DEPARTMENT,
JERRY HARWOOD, BILL STEVEN,
GENE McMANUS, MELANIE BARRY,
DANA RENO, ROBERT BARBER,
ED FLESHMAN, CRESCENT CITY
POLICE DEPARTMENT,
DOUGLASS PLACK,
GREG JOHNSON, JAMES
HOLT, CALEB CHADWICK, THOMAS
BURKE, DEL NORTE DISTRICT ATTORNEY,
KEITH MORRIS, AC FIELD, MICHAEL RIESE,
DARREN McELFRESH, AND FRITZ
LUDERMAN

Defendants

Entered on Civil Docket SEP 19 2007

Appendix 5

1 On January 8, 2007, plaintiff John Gimbel filed
2 his original Complaint in this action. All of the
3 defendants moved to dismiss the Complaint on various
4 grounds. On June 22, 2007, the Court granted the
5 Motions to Dismiss. See Docket Nos. 49 & 50. The
6 Court's Order included a detailed discussion of the
7 pleadings and applicable law, and specifically allowed
8 Gimbel 30 days to file an Amended Complaint
9 properly alleging claims, if any, against the
10 defendants. On July 12, 2007, plaintiff filed a 6-
11 page document entitled "Amended Complaint." Docket
12 No. 52.

13 Judge Jenkins recused himself from this case on
14 July 23, 2007, and the case was reassigned to this Court.
15 See Docket Nos. 55 & 56. The defendants have moved
16 to dismiss the Amended Complaint for failure to state a
17 claim pursuant to Federal Rule of Civil Procedure
18 12(b)(6).

19 The Court need not look past the first sentence of
20 Gimbel's "Amended Complaint" to see that it is nothing
21 more than profanity-ridden drivel, replete with racial
22 epithets directed at specific members of this Court, and

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24 Entered on Civil Docket SEP 19 2007
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Appendix 6

1 should be dismissed with prejudice. Even if the
2 "Amended Complaint" actually alleged a cognizable
3 claim (which a cursory review of the document
4 demonstrates that it does not), the Court is under no
5 obligation to consider the merits of Gimbel's
6 calumnious screed, which is a stream-of-consciousness
7 diatribe directed primarily at insulting the Court.

8 While it is true that pro se complaints are held to
9 a less stringent pleading standard than attorneys, pro se
10 litigants must follow the same general rules of procedure
11 and decorum that govern other litigants. *See Haines v.*
12 *Kerner*, 404 U.S. 519 (1972); *King v. Atiyeh*, 814 F.2d
13 565, 567 (9th Cir. 1986); *Brown v. Rumsfield*, 211
14 F.R.D. 601, 605 (N.D. Cal. 2002). The Amended
15 Complaint filed by Gimbel is an abusive document
16 designed to insult the Court, and will be dismissed under
17 the Court's inherent powers to summarily dismiss
18 abusive pleadings.

19 "Due to the very nature of the court as an
20 institution, it must and does have an inherent power to
21 impose order, respect, decorum, silence, and compliance
22 with lawful mandates. This power is organic, without

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24 Entered on Civil Docket SEP 19 2007
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Appendix 7

1 need of a statute or rule for its definition, and it is
2 necessary to the exercise of all other powers." *United*
3 *States v. Shaffer Equip. Co.*, 11 F.3d 450, 461 (4th
4 Cir.1993). Accordingly, "if the complaint or other
5 pleadings are abusive or contain offensive language,
6 they may be stricken *sua sponte* under the inherent
7 powers of the court." *Phillips v. Carey*, 638 F.2d 207,
8 208 (10th Cir.1981). Particularly apposite here, the court
9 in *Theriault v. Silber*, 579 F.2d 302 (5th Cir.1978)
10 dismissed an appeal with prejudice because the
11 appellant's notice of appeal contained "vile and insulting
12 references to the trial judge." Although recognizing the
13 leniency typically given to pro se plaintiffs, the court
14 stated, as is apt here: "This court simply will not allow
15 liberal pleading rules and pro se practice to be a vehicle
16 for abusive documents. Our pro se practice is a shield
17 against the technical requirements of a past age; it is not
18 a sword with which to insult a trial judge." *Id.* at 303;
19 *see also Carrigan v. California State Legislature*,
20 263 F.2d 560, 564 (9th Cir.1959) ("Perhaps the easiest
21 procedure in this case would be to dismiss the entire
22 appeal as frivolous, and strike the briefs and pleadings

23 Entered on Civil Docket SEP 19 2007
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Appendix 8

1 filed by appellant ... as either scandalous, impertinent,
2 scurrilous, and/or without relevancy. Undoubtedly such
3 action would be justified by this Court.”)

4 Accordingly, IT IS HEREBY ORDERED THAT
5 defendants’ Motions to Dismiss [Docket Nos. 57 & 59]
6 are GRANTED. Gimbel’s Amended Complaint is
7 DISMISSED WITH PREJUDICE. The Clerk is directed
8 to close the file and terminate any pending matters.

9 IT IS SO ORDERED.

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11 Dated: 9/18/07 s/SAUNDRA BROWN ARMSTRONG

12 United States District Judge.
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24 Entered on Civil Docket SEP 19 2007
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JOHN GIMBEL
Plaintiff

**CASE NO. : C070113 MJJ
ORDER GRANTING
DEFENDANT'S
MOTION TO DISMISS**

v.

**COUNTY OF DEL NORTE, JERRY HARWOOD,
BILL STEVEN, GENE McMANUS, MELANIE
BARRY, ROBERT BARBER, ED FLESHMAN,
KEITH MORRIS, A.C. FIELD, DISTRICT
ATTORNEY MICHAEL RIESE, DARREN
McELFRESH,**
Defendants.

INTRODUCTION

Before the Court is a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) brought by Defendants Michael Riese, Keith Morris, Darren McElfresh, A.C. Fields, (collectively, "District Attorney Defendants"), Bill Steven, Gene McManus, Melanie Barry, Robert Barber, Jerry Harrwood (collectively, "Sheriff Department Defendant"), and the County of

Appendix 10

Del Norte (collectively, "County Defendants").¹ In the current motion Defendants seek to dismiss all of Plaintiff's claims. Pro se Plaintiff John Gimbel ("Plaintiff" or "Gimbel") opposes Defendants' Motion. For the following reasons, the Court **GRANTS** Defendants' Motion to Dismiss.

FACTUAL BACKGROUND

In this civil action Plaintiff seeks monetary damages from Defendants under federal and state causes of action resulting from Plaintiff's arrest and subsequent prosecution for an Internet message posted² on the

¹ Docket No. 14. Plaintiff alleges claims against the following list of Defendants: State of California, Del Norte County Sheriff's Department, Jerry Harwood, Bill Steven, Gene McManus, Melanie Barry, Dana Reno, Robert Barber, Ed Fleshman, Crescent City Police Department, Douglas Plack, Greg Johnson, James Holt, Caleb Chadwick, Thomas Burke, Del Norte District Attorney, Darren McElfresh, and Fritz Luderman.

² Pro se Plaintiff's internet posting read,

*Just got a \$5 parking ticket. The Crescent City piggy-wiggly that gave it to me left a little over-zealous. That's a drag. I am hereby deputizing all the citizens of Crescent City to fix up some of the f*ck up piggos. Grab those hi-powered deer rifles, each and every, and get in groups of 50 and more and go breeze away to dust the skull of the policy chief. Make an example of that scum. That should do it for awhile. However, if any other piggos down at the station give you crap on this or get in the way, then blow their skulls off, too.*

Appendix 11

Internet Community Forum for the City of Crescent City. As best as the Court can discern, the material allegations from Plaintiff's Complaint are as follows.

On April 8, 2004, the Del Norte County Sheriff's Department arrested Plaintiff and removed two computers and two handguns from the arrest location. (Compl. ¶ 5.) Defendants charged Plaintiff with violating Cal. Penal Code § 71.³ (*Id.* ¶ 25.) Plaintiff's criminal jury trial began on September 26, 2005. (*Id.* ¶ 121.) Following his conviction, the trial court sentenced Plaintiff on October 27, 2005.⁴ However, on June 17, 2006, the appellate court overturned Plaintiff's conviction. (*Id.* ¶¶ 5, 10.)

On August 30, 2004, Plaintiff filed a notice of claim titled "Government Claim For Damages and Injunctive Relief (Government Code 910)." (*Id.* Ex. 2.) Plaintiff's government claim against Defendants alleged

(Compl. Ex. A.)

³ "Threatening Public Officers and Employees and School Officials." Cal. Penal Code § 71.

⁴ See Plaintiff's Exhibit 4, Docket No. 4

Appendix 12

the same causes of action against the same list of Defendants as does Plaintiff's current Complaint. (*Id.*) Plaintiff alleges that he filed the claim within the statutory of limitations period for such a claim. (*Id.* ¶ 7.) Plaintiff's administrative claim was rejected on October 15, 2005. (Declaration of John Vrieze ("Vrieze Decl.") ¶ 9, Ex. H.)

On January 8, 2007, Plaintiff filed the operative complaint now before this Court. Plaintiff's Complaint alleges federal claims for relief against Defendants for violation of his rights under the First, Second, and Fourth Amendments of the United States Constitution. (*Id.* ¶¶ 215, 234, 236.) Plaintiff's Complaint also alleges state law tort causes of action for intentional infliction of emotional distress, assault, battery, malicious prosecution, trespass, conversion of personal property, and false imprisonment. (*Id.* ¶¶ 222, 224, 226, 228, 230.) Plaintiff seeks damages of \$1.36 billion. (*Id.* ¶ 106.)

LEGAL STANDARD

I. Motion to Dismiss

Appendix 13

1 A motion to dismiss pursuant to Federal Rule of
2 Civil Procedure 12(b)(6) tests the legal sufficiency of a
3 claim. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.
4 2001). Because the focus of a Rule 12(b)(6) motion is
5 on the legal sufficiency, rather than the substantive
6 merits of a claim, the Court ordinarily limits its review
7 to the face of the complaint. *See Van Buskirk v. Cable*
8 *News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002).
9 Generally, dismissal is proper only when the
10 plaintiff has failed to assert a cognizable legal theory or
11 failed to allege sufficient facts under a cognizable legal
12 theory. *See SmileCare Dental Group v. Delta Dental*
13 *Plan of Cal., Inc.*, 88 F.3d 780, 782 (9th Cir. 1996);
14 *Balisteri v. Pacifica Police Dep't*, 901 F.2d 696, 699
15 (9th Cir. 1988); *Robertson v. Dean Witter Reynolds,*
16 *Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). Further,
17 dismissal is appropriate only if it appears beyond a
18 doubt that the plaintiff can prove no set of facts in
19 support of a claim. *See Abramson v. Brownstein*, 897
20 F.2d 389, 391 (9th Cir. 1990). In considering a Rule
21 12(b)(6) motion, the Court accepts the plaintiff's
22 material allegations in the complaint as true and
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Appendix 14

1 construes them in the light most favorable to the
2 plaintiff. See *Shwarz v. United States*, 234 F.3d 428, 435
3 (9th Cir. 2000).

4 A court may dismiss a complaint pursuant to
5 Federal Rule of Civil Procedure 12(b)(6) for the
6 pleading of insufficient facts under an adequate theory.
7 *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530,
8 533-34 (9th Cir. 1984). When deciding upon a motion to
9 dismiss pursuant to Rule 12(b)(6), a court must take all
10 of the material allegations in the plaintiff's complaint
11 as true, and construe them in the light most favorable to
12 the plaintiff. *Parks School of Business, Inc. v.*
13 *Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).

14 In the context of a motion to dismiss, review is
15 limited to the contents in the complaint. *Allarcom Pay*
16 *Television, Ltd. v. General Instrument Corp.*, 69 F.3d
17 381, 385 (9th Cir. 1995). When matters outside the
18 pleading are presented to and accepted by the court, the
19 motion to dismiss is converted into one for summary
20 judgment. However, matters properly presented to the
21 court, such as those attached to the complaint and
22 incorporated within its allegations, may be considered as
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Appendix 15

part of the motion to dismiss. *See Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1989). Where a plaintiff fails to attach to the complaint documents referred to therein, and upon which the complaint is premised, a defendant may attach to the motion to dismiss such documents in order to show that they do not support the plaintiff's claim. *See Pacific Gateway Exchange*, 169 F. Supp. 2d at 1164; *Branch v. Tunnell*, 14 F.3d 449, 44 (9th Cir. 1994) (overruled on other grounds). Thus, the district court may consider the full texts of documents that the complaint only quotes in part. *See In re Stay Electronics Sec. Lit.*, 89 F.3d 1399, 1405 n.4 (1996), *cert denied*, 520 U.S. 1103 (1997). This rule precludes plaintiffs "from surviving a Rule 12(b)(6) motion by deliberately omitting references to documents upon which their claims are based." *Parrino v. FHP, Inc.*, 146 F.3d 699, 705 (9th Cir. 1998).

ANALYSIS

I. Motion to Dismiss § 42 U.S.C. 1983 Claims Against District Attorney Defendants

Appendix 16

A. Absolute Prosecutorial Immunity For

District Attorney Defendants

District Attorney Defendant's contend that Plaintiff's 42 U.S.C. § 1983 claims against Michael Riese, Keith Morris, Darren McElfresh, and A.C. Field are barred as a matter of law by absolute prosecutorial immunity. Plaintiff's Opposition alleges no legally cognizable theory or factual allegation to Defendant's opposition. As explained below, the Court finds that District Attorney Defendants are entitled to absolute prosecutorial immunity.

A prosecutor performing an advocate's role is an officer of the court entitled to absolute immunity. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 272-73 (1993). Prosecutors therefore are absolutely immune from liability for their conduct as "advocates" during the initiation of a criminal case and its presentation at trial. *See id.*; *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976); *see, e.g., Burns v. Reed*, 500 U.S. 478, 490-91 & n.6 (1991) (prosecutors absolutely immune for their conduct before grand juries and in presenting evidence at probable-cause hearings for a search warrant); *Imbler*,

Appendix 17

1 424 U.S. at 431 (prosecutor absolutely immune from
2 liability for the knowing use of false testimony at trial);
3 *Broam v. Bogan*, 320 F.3d 1023, 1029-30 (9th Cir.
4 2003) (prosecutors absolutely immune for gathering
5 additional evidence after probable cause is established or
6 criminal proceedings have begun when they are
7 performing a quasi-judicial function). The "reasons
8 supporting the doctrine of absolute immunity apply with
9 equal force regardless of the nature of the underlying
10 action." *Id.* (citing *Flood v. Harrington*, 532 F.2d 1248,
11 1251 (9th Cir. 1976)). The touchstone of this immunity
12 is whether the attorney's actions are "intimately" or
13 "closely" associated with the judicial process. *See id.* If
14 the government attorney is performing acts intimately
15 associated with the judicial phase of the litigation, that
16 attorney is entitled to absolute immunity from damage
17 liability. *See Id.*

18 Prosecutors are entitled only to qualified, not
19 absolute, immunity when they perform administrative or
20 investigatory, rather than advocacy, functions. *See*
21 *Kalina v. Fletcher*, 522 U.S. 119, 122-31 (1997). Thus,
22 in determining immunity, the court examines the nature
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Appendix 18

1 of the function performed, not the identity of the actor
2 who performed it. *See id.* at 127. Absolute immunity
3 requires that the activities at issue be “intimately
4 associated with the judicial phase of the criminal
5 process.” *Imbler*, 424 U.S. at 430. Prosecutors therefore
6 are not absolutely immune when they take part in the
7 preliminary gathering of evidence that may ripen into a
8 potential prosecution, *See Buckley*, 509 U.S. at 273;
9 *Nash-Holmes*, 169 F.3d at 642; *Gobel v. Maricopa*
10 *County*, 867 F.2d 1201 (9th Cir. 1989), or give advice to
11 the police in the investigative phase of a criminal case,
12 *See Burns*, 500 U.S. at 493.

13 Here, District Attorney Defendants contend that
14 allegations in Plaintiff’s Complaint fall within the scope
15 of their authority to act in a quasi-judicial capacity. In
16 Plaintiff’s Complaint Plaintiff makes a general assertion
17 that there was no probable cause to issue a warrant for
18 his arrest. (Compl. ¶ 24.) Plaintiff also alleges
19 Defendant Keith Morris presented false evidence in
20 response to Plaintiff’s Motion to Dismiss criminal
21 charges which Plaintiff submitted to the criminal court
22 on or about July, 2004. (*Id.* ¶¶ 15,117.) Plaintiff
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Appendix 19

1 also alleges that District Attorney Defendants used an
2 inaccurate example of Plaintiff's Internet posting when
3 prosecuting him (*Id.* ¶ 108.)

4 Because the face of Plaintiff's Complaint fails to
5 allege any cognizable legal theory or factual basis
6 opposing District Attorney Defendants's contention of
7 absolute prosecutorial immunity to all Plaintiff's
8 Section 1983 claims, the Court **GRANTS** District
9 Attorney Defendants' Motion to Dismiss all
10 Section 1983 claims. Plaintiff shall have thirty days from
11 the entry of this order to file an Amended Complaint to
12 properly allege claims, if any, against District Attorney
13 Defendants. Plaintiff's Amended Complaint should
14 allege specific facts as to how the District Attorney
15 Defendants are not entitled to absolute prosecutorial as
16 to Plaintiff's claims against them.

17 **II. Motion to Dismiss Plaintiff's Section 1983 Claims** 18 **against Sheriff Department Defendants**

19 **A. Failure to Allege Sufficient Facts to Support** 20 **Section Claim Against Sheriff Department** 21 **Defendants**

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Appendix 20

1 Sheriff Department Defendants Bill Steven, Gene
2 McManus, Melanie Barry, Robert Barber, Ed Fleshman,
3 and Jerry Harwood contend that Plaintiff offers no
4 factual allegations specifying how they deprived
5 Plaintiff of any of his constitutional rights. Plaintiff's
6 Opposition alleges no cognizable legal theory or factual
7 basis opposing Sheriff Department Defendants'
8 contention. As explained below, the Court finds that
9 Plaintiff has not alleged sufficient facts to support a §
10 1983 claim against any of the Sheriff Department
11 Defendants.

12 To seek relief under 42 U.S.C. § 1983, Plaintiff
13 must show defendants, acting under the color of state
14 law, deprived Plaintiff of his constitutional or federal
15 statutory rights. *See West v. Atkins*, 487 U.S. 42, 48
16 (1988). A prima facie case under § 1983 requires
17 allegations showing how individually named defendants
18 caused or personally participated in causing the alleged
19 harm. *Arnold v. Int'l Bus. Machines Copr.*, 637 F.2d
20 1350, 1355 (9th Cir. 1981). "Ordinarily, a pro se
21 complaint will be liberally construed and will be
22 dismissed only if it appears 'beyond doubt that the
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Appendix 21

1 plaintiff can prove no set of facts in support of his claim
2 which would entitle him to relief.' " *Estelle v. Gamble*,
3 429 U.S. 97, 106 (1976) (quoting *Conley v. Gibson*,
4 355 U.S. 41, 45-46, (1957)). However, "a liberal
5 interpretation of a [pro se] civil rights complaint may not
6 supply essential elements of the claim that were not
7 initially pled. Vague and conclusory allegations of
8 official participation in civil rights violations are not
9 sufficient to withstand a motion to dismiss." *Pena v.*
10 *Gardner*, 976 F.2d 469, 471 (9th Cir. 1992) (quoting
11 *Ivey v. Board of Regents of Univ. of Alaska*, 673
12 F.2d 266, 268 (9th Cir.1982)).

13 Here, Sheriff Department Defendants contend
14 that Plaintiff alleges no factual allegations specifying
15 how they deprived Plaintiff of his constitutional rights.
16 In Plaintiff's Complaint, Plaintiff alleges that Sheriff
17 Department Defendants chose to take Plaintiff's Internet
18 posting out of context (Compl. ¶¶ 108, 109), and alleges
19 generally that there was no probable cause for a warrant
20 or arrest. (*Id.* ¶ 24.) Because Plaintiff fails to set forth
21 specific facts establishing a basis for First, Second, or
22 Fourth Amendment violations by Sheriff Department
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Appendix 22

Defendants, the Court **GRANTS** Sheriff Department Defendants' Motion to Dismiss on all of Plaintiff's Section 1983 claims. Plaintiff shall have thirty days from the entry of this order to file an Amended Complaint to properly allege claims, if any, against Sheriff Department Defendants.⁵ Plaintiff's Amended Complaint should allege, with specificity, how each Sheriff Department Defendant's action or inaction deprived him of his constitutional rights.

III Motion to Dismiss Claims Against the County of Del Norte

A. Failure to State a Claim Against the County of Del Norte

County Defendants contend that Plaintiff fails to state an individual claim against it and that Plaintiff alleges no facts indicating County Defendant had a policy or custom that amounted to deliberate interference with Plaintiff's Constitutional rights. Plaintiff's Opposition alleges no factual basis opposing

⁵ Because the Court Grants Sheriff Department Defendant's Motion to Dismiss for Failure to Allege Sufficient Facts To Support a § 1983 claim, the Court need not address Sheriff Department Defendant's Motion to Dismiss on the grounds of a Facially Valid Warrant Barring § 1983 Claims or Qualified Immunity.

Appendix 23

County Defendant's contentions. As explained below, the Court finds that Plaintiff has not alleged facts establishing County Defendants had a policy or custom that amounted to deliberate interference with Plaintiff's Constitutional rights.

Local government officials sued in their official capacities are "persons" under § 1983 in those cases in which a local government would be suable in its own name. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 n. 55 (1978)). "[T]he legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress did intend municipalities and other local government units to be included among those persons to whom § 1983 applies." *Monell*, 436 U.S. at 690. Local governments can be sued for monetary, declaratory, or injunctive relief where such suits arise out of unconstitutional actions that implement or execute a "policy statement, ordinance, or decision officially adopted and promulgated by that body's officers. . . ." *Id.* 690-91. If no official policy exists, "customs and usages" may fulfill this element of a Section 1983 claim against a local government. *Id.* However, "A

Appendix 24

1 municipality cannot be held liable solely because it
2 employs a tortfeasor - or, in other words, a municipality
3 cannot be held liable under § 1983 on a respondeat
4 superior theory." *Monell*, 436 U.S. at 691. "A local
5 government may not be sued under § 1983 for an injury
6 inflicted solely by its employees or agents. Instead, it is
7 when execution of a government's policy or custom,
8 whether made by its law-makers or by those whose
9 edicts or acts may fairly be said to represent official
10 policy, inflicts the injury that the government as an
11 entity is responsible under § 1983." *Id.* at 694.

12 "To impose liability on a local governmental
13 entity for failing to act to preserve constitutional rights,
14 a section 1983 plaintiff must establish: (1) that he
15 possessed a constitutional right of which he was
16 deprived; (2) that the municipality had a policy; (3) that
17 this policy 'amounts to deliberate indifference' to the
18 plaintiff's constitutional right; and (4) that the policy is
19 the 'moving force behind the constitutional violation.'
20 *Oviatt v. Pearcc*, 954 F.2d 1470, 1474 (9th Cir. 1992)
21 (Quoting *City of Canton*, 489 U.S. at 389-91).

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Appendix 25

1 Here, Plaintiff alleges no facts indicating that
2 County Defendant has a policy amounting to deliberate
3 indifference to Plaintiff's Constitutional rights. Because
4 Plaintiff fails to provide a factual basis of liability for
5 County Defendant under Section 1983, the Court
6 **GRANTS** County Defendant's Motion to Dismiss each
7 of Plaintiff's Section 1983 claims against the County of
8 Del Norte. Plaintiff shall have thirty days from the entry
9 of this order to file an Amended Complaint to properly
10 allege claims, if any, against the County of Del Norte.
11 Plaintiff's Amended Complaint should proffer facts
12 sufficient to establish that the County of Del Norte has a
13 formal policy that amounts to deliberate indifference to
14 the Plaintiff's constitutional rights, which was the
15 moving force behind the constitutional violations.

16 **IV. Motion to Dismiss All of Plaintiff's State Law Claims Against All Defendants**

17 **A. Failure to Allege Sufficient Facts of 18 Compliance With The California Torts Claim Act**

19 Defendants collectively contend that Plaintiff's
20 state law tort claims are barred for failure to comply
21 with the statute of limitations period under the
22 California Tort Claims Act ("CTCA"). In Plaintiff's
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Appendix 26

1 Opposition, Plaintiff alleges no cognizable legal theory
2 or sufficient factual basis opposing Defendant's
3 Contention.

4 The CTCA governs tort claims against public
5 entities and their officials. *See* Cal. Gov. Code § 810 *et*
6 *seq.* The CTCA requires any civil complaint for money
7 or damages must first be timely presented in writing to,
8 and rejected by, the pertinent public entity. Cal. Gov.
9 Code §§ 910, 912.4, 912.8, 945.4; *See also Hart v.*
10 *Alameda County*, 76 Cal. App. 4th 766, 778 (Cal. Ct.
11 App. 1999). Suits against a public entity or public
12 employees are governed by the specific statute of
13 limitations provided in the Government Code, not the
14 statute of limitations that applies to private defendants.
15 *Moore v. Twomey*, 120 Cal. App. 4th 910, 913-914
16 (2004); *Martel v. Antelope Valley Hospital*
17 *Medical Center*, 67 Cal. App. 4th 978, 981 (Cal. Ct.
18 App. 1998). Each theory of recovery against the public
19 entity must have been reflected in a timely claim.
20 *Munoz v. State of California*, 33 Cal. App. 4th 1767,
21 1778 (Ct. Cal. App. 1995). In addition, the factual
22 circumstances set forth in the
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Appendix 27

claim must correspond with the facts alleged in the complaint. *Brownell v. Los Angeles Unified School Dist.*, 4 Cal. App. 4th 787, 793-94 (1992). If a claimant fails to timely file a claim with the public entity, and its claim is consequently rejected by the public entity for that reason, courts are without jurisdiction to hear the claimant's cause of action. *Greyhound Lines, Inc. v. County of Santa Clara*, 187 Cal. App. 3d 480, 487 (1986).

Generally speaking, no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented until a written claim has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board. Cal. Gov. Code, § 945.4; *Ocean Services Corp. v. Ventura Port Dist.*, 15 Cal. App. 4th 1762, 1775 (Ct. Cal. App. 1993). Government Code section 911.2 requires the claim relating to a cause of action for death or for injury to person or to personal property be presented not later than *six months* after the accrual of

Appendix 28

the cause of action. Cal. Gov. Code § 911.2.⁶ Furthermore, Government Code section 945.4, requires presentation of a timely claim as a condition precedent to the commencement of suit against the public entity. Government Code Section 945.6, subdivision (a)(1), requires the commencement of the suit to be no later than six months after written notice of the rejected claim. Cal. Gov. Code § 945.6.

California Government Code section 945.3 provides that the CTCA statute of limitations is tolled for a person charged with a criminal offence and bringing a civil action for money against a peace officer or public entity employing the peace officer based upon conduct of the peace officer relating to the offense for which the accused is charged. Cal. Gov. Code §945.3. The applicable statute of limitation is tolled for claims

⁶ The claim presentation requirement serves several purposes: (1) it gives the public entity prompt notice of a claim so it can investigate the strengths and weaknesses of the claim while the evidence is still fresh and the witnesses are available; (2) it affords opportunity for amicable adjustment, thereby avoiding expenditure of public funds in needless litigation; and (3) it informs the public entity of potential liability so it can better prepare for the upcoming fiscal year. *Wadley v. County of Los Angeles*, 205 Cal. App. 2d 668, 670 (Ct. Cal. App. 1962); *Nguyen v. Los Angeles County Harbor/UCLA Medical Center*, 8 Cal. App. 4th 729, 734 (Ct. Cal. App. 1992).

Appendix 29

1 against peace officers or public entities employing the
2 peace officers while criminal charges are pending before
3 a superior court. *Id.* Under this section criminal charges
4 are "pending" until the date of judgment. *See McAlpine*
5 *v. Superior Court*, 209 Cal. App. 3d 1, 3 (1989).
6 However, the applicable statute of limitation is not tolled
7 while a case is on appeal. Cal. Gov. Code § 945.3.

8 Here, Plaintiff alleges only that, sometime in
9 2004, he filed a notice of claim entitled "Government
10 Claim for Damages and Injunctive Relief (Government
11 Code 910)" that was filed within the six month
12 limitation period required by CTCA statute. (Compl. ¶
13 7.) Because Plaintiff has proffered only a conclusory
14 allegation that he has complied with necessary CTCA
15 filing requirements, Plaintiff has not alleged sufficient
16 facts to support his CTCA claim against County
17 Defendants. For this reason, the Court **GRANTS**
18 Defendants' Motion to Dismiss Plaintiff's state law tort
19 claims. Plaintiff shall have thirty days from the entry of
20 this order to file an Amended Complaint to properly
21 allege his state law tort claims, if any, against the
22 County Defendants. Plaintiff's Amended Complaint
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Appendix 30

1 should provide a factual basis for alleging that Plaintiff's
2 commencement of this civil action was timely under the
3 pertinent Government Code Sections.

4 CONCLUSION

5 For the foregoing reasons, the Court:

6 1. **GRANTS** District Attorney Defendants'
7 Motion to Dismiss each of Plaintiff's Section 1983
8 claims;

9 2. **GRANTS** Sheriff Department Defendants'
10 Motion to Dismiss on all of Plaintiff's Section 1983
11 claims. Plaintiff shall have thirty days from the entry of
12 this order to file an Amended Complaint to properly
13 allege claims, if any, against Sheriff Department
14 Defendants;

15 3. **GRANTS** County Defendant's Motion to
16 Dismiss each of Plaintiff's Section 1983 claims against
17 the County of Del Norte. Plaintiff shall have thirty days
18 from the entry of this order to file an Amended
19 Complaint to properly allege claims, if any, against the
20 County of Del Norte.

21 4. **GRANTS** Defendants' Motion to Dismiss
22 Plaintiff's state law tort claims. Plaintiff shall have thirty
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1 days from the entry of this order to file an Amended
2 Complaint to properly allege his state law tort claims, if
3 any, against the County Defendants.

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5 **IT IS SO ORDERED.**

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8 Dated: June 21, 2007

s/MARTIN J. JENKINS
UNITED STATES
DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

JOHN GIMBEL
Plaintiff

**CASE NO. : C070113 MJJ
ORDER GRANTING
DEFENDANT'S
MOTION TO DISMISS**

v

**CRESCENT CITY POLICE DEPARTMENT,
DANA RENO, DOUGLAS PLANK,
JAMES HOLT, and FRITZ LUDERMAN,**

Defendants.

INTRODUCTION

Before the Court is Defendants City of Crescent City, Dana Reno, Douglas Plank, James Holt, and FritzLuderman's (collectively, "City Defendants")¹ Motion to Dismiss Pursuant to

¹ In the Complaint, pro se Plaintiff generally refers to the City of Crescent City as "Crescent City Police Department.

Appendix 33

1 Federal Rule of Civil Procedure 12(b)(6), Motion
2 for a More Definite Statement Pursuant to Federal
3 Rule of Civil Procedure 12(e), and Motion to Strike
4 Pursuant to Federal Rule of Civil Procedure 12(f).²
5 Pro se Plaintiff John Gimbel opposes City
6 Defendants' motion. For the following reasons, the
7 Court **GRANTS** City Defendants' Motion to
8 Dismiss.

9 **FACTUAL BACKGROUND**

10 In this civil action Plaintiff seeks monetary
11 damages from City Defendants under federal and
12 state causes of action resulting from Plaintiff's
13 arrest and subsequent prosecution for an Internet
14 message posted³ on the Internet Community

15
16 Plaintiff alleges claims against the following list of
17 Defendants: State of California, Del Norte County Sheriff's
18 Department, Jerry Harwood, Bill Steven, Gene McManus,
19 Melanie Barry, Dana Reno, Robert Barber, Ed Fleshman,
20 Crescent City Police Department, Douglas Plack, Greg
21 Johnson, James Holt, Caleb Chadwick, Thomas Burke, Del
22 Norte District Attorney, Darren McElfresh, and Fritz
23 Iuderman. (Complaint
24 ("Compl.") at Docket No. 3.)

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² Docket Nos. 13 and 35.

³ Pro se Plaintiff's internet posting read,

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1 Forum for the City of Crescent City. As best as the
2 Court can discern, the material allegations from
3 Plaintiff's Complaint are as follows.

4 In this civil action Plaintiff seeks monetary
5 damages from City Defendants under federal and
6 state causes of action resulting from Plaintiff's
7 arrest and subsequent prosecution for an Internet
8 message posted 3 on the Internet Community
9 Forum for the City of Crescent City. As best as the
10 Court can discern, the material allegations from
11 Plaintiff's Complaint are as follows.

12 On April 8, 2004, the Del Norte County
13 Sheriff's Department arrested Plaintiff and
14 removed two computers and two handguns from
15 the arrest location. (Compl. ¶ 5.) Defendants
16

17 Just got a \$5 parking ticket. The Crescent City piggy-wiggly
18 that gave it to me left a little over-zealous. That's a drag. I
19 am hereby deputizing all the citizens of Crescent City to fix
20 up some of the f*ck up piggos. Grab those hi-powered deer
rifles, each and every, and get in groups of 50 and more and
go breeze away to dust the skull of the policy chief.

21 Make an example of that scum. That should do it for awhile.
22 However, if any other piggos down at the station give you
crap on this or get in the way, then blow their skulls off, too.

23 (Compl. Ex. A.)
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Appendix 35

1 charged Plaintiff with violating Cal. Penal Code §
2 71.⁴ (*Id.* ¶ 25.) Plaintiff's criminal jury trial began
3 on September 26, 2005. (*Id.* ¶ 121.) Following his
4 conviction, the trial court sentenced Plaintiff on
5 October 27, 2005. ⁵ However, on June 17, 2006,
6 the appellate court overturned Plaintiff's
7 conviction. (*Id.* ¶¶ 5, 10.)

8 On August 30, 2004, Plaintiff filed a notice
9 of claim titled "Government Claim For Damages
10 and Injunctive Relief (Government Code 910)." (*Id.*
11 Ex. 2.) Plaintiff's government claim against
12 Defendants alleged the same causes of action
13 against the same list of Defendants as does
14 Plaintiff's current Complaint. (*Id.*) Plaintiff alleges
15 that he filed the claim within the statutory of
16 limitations period for such a claim. (*Id.* ¶ 7.)
17 Plaintiff's administrative claim was rejected on
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20 ⁴ "Threatening Public Officers and Employees and School
21 Officials." Cal. Penal Code § 71.

22 ⁵ See Plaintiff's Exhibit 4, Docket No. 4
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Appendix 36

October 15, 2005. (Declaration of John Vrieze
("Vrieze Decl.") ¶ 9, Ex. H.)

On January 8, 2007, Plaintiff filed the
operative complaint now before this Court.
Plaintiff's Complaint alleges federal claims for relief
against City Defendants for violation of his rights
under the First, Second, and Fourth Amendments
of the United States Constitution. (*Id.* ¶¶ 215, 234,
236.) Plaintiff's Complaint also alleges state law
tort causes of action for intentional infliction of
emotional distress, assault, battery, malicious
prosecution, trespass, conversion of personal
property, and false imprisonment. (*Id.* ¶¶ 222, 224,
,226, 228, 230.) Plaintiff seeks damages of \$1.36
billion. (*Id.* ¶ 106.)

LEGAL STANDARD

A motion to dismiss pursuant to Federal
Rule of Civil Procedure 12(b)(6) tests the legal
sufficiency of a claim. *Navarro v. Block*, 250 F.3d
729, 732 (9th Cir. 2001). Because the focus of a
Rule 12(b)(6) motion is on the legal sufficiency,
rather than the substantive merits of a claim, the

Appendix 37

1 Court ordinarily limits its review to the face of the
2 complaint. See *Van Buskirk v. Cable News*
3 *Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002).
4 Generally, dismissal is proper only when the
5 plaintiff has failed to assert a cognizable legal
6 theory or failed to allege sufficient facts under a
7 cognizable legal theory. See *SmileCare Dental*
8 *Group v. Delta Dental Plan of Cal., Inc.*, 88 F.3d
9 780, 782 (9th Cir. 1996); *Balisteri v. Pacifica Police*
10 *Dept.*, 901 F.2d 696, 699 (9th Cir. 1988);
11 *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d
12 530, 534 (9th Cir. 1984). Further, dismissal is
13 appropriate only if it appears beyond a doubt that
14 the plaintiff can prove no set of facts in support of a
15 claim. See *Abramson v. Brownstein*, 897 F.2d 389,
16 391 (9th Cir. 1990). In considering a Rule 12(b)(6)
17 motion, the Court accepts the plaintiff's material
18 allegations in the complaint as true and construes
19 them in the light most favorable to the plaintiff. See
20 *Shwarz v. United States*, 234 F.3d 428, 435 (9th
21 Cir. 2000).

Appendix 38

1 A court may dismiss a complaint pursuant to
2 Federal Rule of Civil Procedure 12(b)(6) for the
3 pleading of insufficient facts under an adequate
4 theory. *Robertson v. Dean Witter Reynolds, Inc.*,
5 749 F.2d 530, 533-34 (9th Cir. 1984). When
6 deciding upon a motion to dismiss pursuant to
7 Rule 12(b)(6), a court must take all of the material
8 allegations in the plaintiff's complaint as true, and
9 construe them in the light most favorable to the
10 plaintiff. *Parks School of Business, Inc. v.*
11 *Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). In
12 the context of a motion to dismiss, review is limited
13 to the contents in the complaint. *Allarcom Pay*
14 *Television, Ltd. v. General Instrument Corp.*, 69
15 F.3d 381, 385 (9th Cir. 1995). When matters
16 outside the pleading are presented to and accepted
17 by the court, the motion to dismiss is converted
18 into one for summary judgment. However, matters
19 properly presented to the court, such as those
20 attached to the complaint and incorporated within
21 its allegations, may be considered as part of the
22 motion to dismiss. *See Hal Roach Studios, Inc. v.*

Appendix 39

1 *Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19
2 (9th Cir. 1989). Where a plaintiff fails to attach to
3 the complaint documents referred to therein, and
4 upon which the complaint is premised, a defendant
5 may attach to the motion to dismiss such
6 documents in order to show that they do not
7 support the plaintiff's claim. *See Pacific Gateway*
8 *Exchange*, 169 F. Supp. 2d at 1164; *Branch v.*
9 *Tunnell*, 14 F.3d 449, 44 (9th Cir. 1994) (overruled
10 on other grounds). Thus, the district court may
11 consider the full texts of documents that the
12 complaint only quotes in part. *See In re Stay*
13 *Electronics Sec. Lit.*, 89 F.3d 1399, 1405 n.4
14 (1996), *cert denied*, 520 U.S. 1103 (1997). This rule
15 precludes plaintiffs "from surviving a Rule 12(b)(6)
16 motion by deliberately omitting references to
17 documents upon which their claims are based."
18 *Parrino v. FIHP, Inc.*, 146 F.3d 699, 705 (9th Cir.
19 1998).

ANALYSIS

I. Motion To Dismiss Plaintiffs Section 1983 Claims Against City Defendants

Appendix 40

A. Section 1983 Claims Against the Individual City Defendants

At the outset, the Court notes that Plaintiff's complaint does not make any specific factual allegations against Dana Reno, Douglas Plank, or James Holt, or Fritz Luderman. The only individual Defendant specifically identified in Plaintiff's Complaint is Douglas Plank. (Compl. ¶¶ 25, 26, 31, 34, 60, 84.) However, Plaintiff fails to allege how these individual Defendants caused or personally participated in causing Plaintiff's alleged harm.

To seek relief under 42 U.S.C. § 1983, Plaintiff must show defendants, acting under the color of state law, deprived Plaintiff of his constitutional or federal statutory rights. *See West v. Atkins*, 487 U.S. 42, 48 (1988). A prima facie case under § 1983 requires allegations showing how individually named defendants caused or personally participated in causing the alleged harm. *Arnold v. Int'l Bus. Machines Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981). "Ordinarily, a pro se complaint will be liberally construed and will be

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1 dismissed only if it appears 'beyond doubt that the
2 plaintiff can prove no set of facts in support of his
3 claim which would entitle him to relief.' " *Estelle v.*
4 *Gamble*, 429 U.S. 97, 106 (1976) (quoting *Conley v.*
5 *Gibson*, 355 U.S. 41, 45-46, (1957)). However, "a
6 liberal interpretation of a [pro se] civil rights
7 complaint may not supply essential elements of the
8 claim that were not initially pled. Vague and
9 conclusory allegations of official participation in
10 civil rights violations are not sufficient to withstand
11 a motion to dismiss." *Pena v. Gardner*, 976 F.2d
12 469, 471 (9th Cir. 1992) (quoting *Ivey v. Board of*
13 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th
14 Cir.1982)).

15 Here, Plaintiff proffers that only Defendant
16 Plank (referred to as "Plack" in Plaintiff's
17 Complaint), "did or should have known and
18 understood from the very beginning, of the
19 extremely visible presence of literary hyperbole"
20 and that he "knew that the exact content of the so
21 called threat words would never happen." (Compl.
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Appendix 42

¶¶ 26, 31). Plaintiff's Complaint does not refer to any other City Defendant.

Because Plaintiff has failed to allege how individual City Defendants caused or personally participated in causing Plaintiff's alleged harm, and because Plaintiff's allegation that Defendant Plank knew or should have known that Plaintiff's Internet posting was literary hyperbole and would never happen is insufficient to withstand a Motion to Dismiss, the Court **GRANTS** City Defendants' Motion to Dismiss each of Plaintiff's Section 1983 claims against individual City Defendants Dana Reno, Douglas Plank, James Holt, and Fritz Luderman. Plaintiff shall have thirty days from the entry of this order to file an Amended Complaint to properly allege claims, if any, against the individual City Defendants, Dana Reno, Douglas Plank, James Holt, and Fritz Luderman. Plaintiff's Amended Complaint should allege, with specificity, how each individual City Defendant's action or inaction deprived him of his constitutional rights. The Court

Appendix 43

1 now turns to Plaintiff's remaining Section 1983
2 claims against the City of Crescent City.

3 **B. First, Second, and Fourth** 4 **Amendment Claims Against the City**

5 The City of Crescent City is the only
6 remaining City Defendant to Plaintiff's Section
7 1983 claims. As a municipality, Section 1983 claims
8 against the City of Crescent City are subject to
9 special pleading requirements. As discussed below,
10 Plaintiff's complaint fails to properly state claims
11 for constitutional violations against the City of
12 Crescent City.

13 Local government may not be sued under
14 Section 1983 for a constitutional violation
15 committed by its employees or agents unless that
16 violation is pursuant to the execution of an official
17 policy or custom. *Monell v. Dept. of Social Serv.*,
18 436 U.S. 658, 694 (1978). A plaintiff may
19 demonstrate a policy or custom to support
20 municipal liability in a number of ways. A plaintiff
21 "may prove that a city employee committed the
22 alleged constitutional violation pursuant to a
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Appendix 44

1 formal governmental policy or a longstanding
2 practice or custom which constitutes the standard
3 operating procedure of the local governmental
4 entity.” *Gillette v. Delmore*, 979 F.2d 1342, 1346
5 (9th Cir. 1992) (quoting *Jett v. Dallas Indep. Sch.*
6 *Dist.*, 491 U.S. 701 (1989)) (internal quotation
7 omitted). In addition, a plaintiff “may prove that an
8 official with final policy-making authority ratified a
9 subordinate’s unconstitutional decision or action
10 and the basis for it.” *Id.* at 1346-47.

11 Here, Plaintiff’s Complaint fails to allege that
12 his constitutional injuries resulted from the City of
13 Crescent City’s “policies, customs, or practices.” In
14 Plaintiff’s Complaint, Plaintiff alleges only that
15 there were multiple noted failures across all levels
16 of government including blatant lies and evidence
17 coverups. (Compl. ¶ 175.) Because Plaintiff has
18 failed to sufficiently state a Section 1983 claim
19 against the City of Crescent City, the Court
20 **GRANTS** the City Defendants’ Motion to Dismiss
21 as to Plaintiff’s Section 1983 claims against the City
22 of Crescent City. Plaintiff shall have thirty days
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1 from the entry of this order to file an Amended
2 Complaint to properly allege claims, if any, against
3 the City of Crescent City. Plaintiff's Amended
4 Complaint should proffer facts sufficient to
5 establish that the City of Crescent City has a formal
6 policy, or longstanding practice which constitutes
7 the standard operating procedure of the City, which
8 was the moving force behind the constitutional
9 violation. The Court now turns to Plaintiff's
10 remaining state law tort claims.

11 **II. Motion to Dismiss State Law Tort Causes**
12 **of Action Against All Defendants**

13 **A. Failure to Allege Sufficient Facts of**
14 **Compliance With The California Tort**
15 **Claims Act**

16 Plaintiff's Complaint alleges state law tort
17 causes of action against City Defendants for
18 intentional infliction of emotional distress, assault,
19 battery, malicious prosecution, trespass,
20 conversion of personal property, and false
21 imprisonment. (*Id.* ¶¶ 222, 224, 226, 228, 230.)
22 Plaintiff's Complaint against City Defendants must
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24
25
26

Appendix 46

1 allege sufficient facts that Plaintiff submitted state
2 law claims within the statutory requirements of the
3 California Tort Claims Act ("CTCA"). The Court
4 now examines the legal sufficiency of Plaintiff's
5 Complaint against the City Defendants for state law
6 tort claims under CTCA statutory requirements.

7 The CTCA governs tort claims against public
8 entities and their officials. *See* Cal. Gov. Code § 810
9 *et seq.* The CTCA requires any civil complaint for
10 money or damages must first be timely presented
11 in writing to, and rejected by, the pertinent public
12 entity. Cal. Gov. Code §§ 910, 912.4, 912.8, 945.4;
13 *See also Hart v. Alameda County*, 76 Cal. App. 4th
14 766, 778 (Cal. Ct. App. 1999). Suits against a public
15 entity or public employees are governed by the
16 specific statute of limitations provided in the
17 Government Code, not the statute of limitations
18 that applies to private defendants.

19 *Moore v. Twomey*, 120 Cal. App. 4th 910, 913-914
20 (2004); *Martel v. Antelope Valley Hospital*
21 *Medical Center*, 67 Cal. App. 4th 978, 981 (Cal. Ct.
22 App. 1998). Each theory of recovery against the
23
24
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Appendix 47

1 public entity must have been reflected in a timely
2 claim. *Munoz v. State of California*, 33 Cal. App.
3 4th 1767, 1778 (Ct. Cal. App. 1995). In addition, the
4 factual circumstances set forth in the claim must
5 correspond with the facts alleged in the complaint.
6 *Brownell v. Los Angeles Unified School Dist.*, 4
7 Cal. App. 4th 787, 793-94 (1992). If a claimant fails
8 to timely file a claim with the public entity, and its
9 claim is consequently rejected by the public entity
10 for that reason, courts are without jurisdiction to
11 hear the claimant's cause of action. *Greyhound*
12 *Lines, Inc. v. County of Santa Clara*, 187 Cal. App.
13 3d 480, 487 (1986).

14 Generally speaking, no suit for money or
15 damages may be brought against a public entity on
16 a cause of action for which a claim is required to be
17 presented until a written claim has been presented
18 to the public entity and has been acted upon by the
19 board, or has been deemed to have been rejected by
20 the board. Cal. Gov. Code, § 945.4; *Ocean Services*
21 *Corp. v. Ventura Port Dist.*, 15 Cal. App. 4th 1762,
22 1775 (Ct. Cal. App. 1993). Government Code section
23
24
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Appendix 48

911.2 requires the claim relating to a cause of action for death or for injury to person or to personal property be presented not later than *six months* after the accrual of the cause of action. Cal. Gov. Code § 911.2. ⁶ Furthermore, Government Code section 945.4, requires presentation of a timely claim as a condition precedent to the commencement of suit against the public entity. Government Code Section 945.6, subdivision (a)(1), requires the commencement of the suit to be no later than six months after written notice of the rejected claim. Cal. Gov. Code § 945.6.

California Government Code section 945.3 provides that the CTCA statute of limitations is tolled for a person charged with a criminal offence and bringing a civil action for money against a

⁶ The claim presentation requirement serves several purposes: (1) it gives the public entity prompt notice of a claim so it can investigate the strengths and weaknesses of the claim while the evidence is still fresh and the witnesses are available; (2) it affords opportunity for amicable adjustment, thereby avoiding expenditure of public funds in needless litigation; and (3) it informs the public entity of potential liability so it can better prepare for the upcoming fiscal year. *Wadley v. County of Los Angeles*, 205 Cal. App. 2d 668, 670 (Ct. Cal. App. 1962); *Nguyen v. Los Angeles County Harbor/UCLA Medical Center*, 8 Cal. App. 4th 729, 734 (Ct. Cal. App. 1992).

Appendix 49

1 peace officer or public entity employing the peace
2 officer based upon conduct of the peace officer
3 relating to the offense for which the accused. Cal.
4 Gov. Code §945.3. The applicable statute of
5 limitation is tolled for claims against peace officers
6 or public entities employing the peace officers
7 while criminal charges are pending before a
8 superior court. *Id.* Under this section criminal
9 charges are "pending" until the date of judgment.
10 *See McAlpine v. Superior Court*, 209 Cal. App. 3d
11 1, 3 (1989). However, the applicable statute of
12 limitation is not tolled while a case is on appeal. Cal
13 .Gov. Code § 945.3.

14 Here, Plaintiff alleges only that, sometime in
15 2004, he filed a notice of claim entitled
16 "Government Claim for Damages and Injunctive
17 Relief (Government Code 910)" that was filed
18 within the six month limitation period required by
19 CTCA statute. (Compl. ¶ 7.) Because Plaintiff has
20 proffered only a conclusory allegation that he has
21 complied with necessary CTCA filing requirements,
22 Plaintiff has not alleged sufficient facts to support
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24
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Appendix 50

1 his CTCA claim against the City Defendants. For
2 this reason, the Court **GRANTS** the City
3 Defendants' Motion to Dismiss Plaintiff's state law
4 tort claims. Plaintiff shall have thirty days from the
5 entry of this order to file an Amended Complaint to
6 properly allege his state law tort claims, if any,
7 against the City Defendants. Plaintiff's Amended
8 Complaint should provide a factual basis for
9 alleging that Plaintiff's commencement of this civil
10 action was timely under the pertinent Government
11 Code Sections.

CONCLUSION

12
13 For the foregoing reasons, the Court:

14 1. **GRANTS** City Defendants' Motion to
15 Dismiss each of Plaintiff's Section 1983 claims
16 against individual City Defendants Dana Reno,
17 Douglas Plank, James Holt, and Fritz Ruderman.
18 Plaintiff shall have thirty days from the entry of this
19 order to file an Amended Complaint to properly
20 allege claims, if any, against the individual City
21 Defendants, Dana Reno, Douglas Plank, James
22 Holt, and Fritz Luderman;

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Appendix 51

1 2. **GRANTS** the City Defendants' Motion to
2 Dismiss as to Plaintiff's Section 1983 claims against
3 the City of Crescent City. Plaintiff shall have thirty
4 days from the entry of this order to file an
5 Amended Complaint to properly allege claims, if
6 any, against the City of Crescent City;
7 and

8 3. **GRANTS** the City Defendants' Motion to
9 Dismiss Plaintiff's state law tort claims. Plaintiff
10 shall have thirty days from the entry of this order to
11 file an Amended Complaint to properly allege his
12 state law tort claims, if any, against the City
13 Defendants.⁷

14
15 **IT IS SO ORDERED.**

16 Dated: June 21, 2007

s/MARTIN J. JENKINS
UNITED STATES
DISTRICT JUDGE

17
18
19
20
21 ⁷ Because the Court has dismissed Plaintiff's claims against the City
22 Defendants, the Court does not address Plaintiff's First Amendment Claim
23 that his Internet Posting was protected speech, and need not address the
24 City Defendants' Motion to Strike and Motion for a More Definite
25 Statement.
26

Appendix 52

Case 3:07-cv-001-MJJ
Document 51
Filed 06/22/2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

JOHN GIMBEL
Plaintiff,

**CASE NO. : Co70113 MJJ
ORDER GRANTING
DEFENDANT'S
MOTION TO DISMISS**

v.

STATE OF CALIFORNIA,
et al.,

Defendants

INTRODUCTION

Before the Court is Defendant State of
California's ("Defendant" or "State") Motion to
Dismiss pursuant to Federal Rules of Civil
Procedure 12(b)(1) and 12(b)(6).¹ Pro se Plaintiff

¹ Docket No. 31, Plaintiff alleges claims against the following list of Defendants: State of California, Del Norte County Sheriff's Department, Jerry Harwood, Bill Steven, Gene McManus, Melanie Barry, Dana Reno, Robert Barber, Ed Fleshman, Crescent City Police Department, Douglas Plack, Greg Johnson, James Holt, Caleb Chadwick, Thomas Burke, Del Norte District Attorney, Darren McElfresh, and Fritz Luderman.

Appendix 53

John Gimbel)"Plaintiff" or "Gimbel") opposes Defendant's Motion to Dismiss. For the follwoing reasons, the Court **GRANTS** Defendant's Motion to Dismiss.

FACTUAL BACKGROUND

In this civil action Plaintiff seeks monetary damages from Defendant under federal and state causes of action resulting from Plaintiff's arrest and subsequent prosecution for an Internet message posted² on the Internet Community Forum for the City of Crescent City. As best as the Court can discern, the material allegations from Plaintiff's Complaint are as follows.

² Pro se Plaintiff's internet posting read,

Just got a \$5 parking ticket. The Crescent City piggy-wiggly that gave it to me left a little over-zealous. That's a drag. I am hereby deputizing all the citizens of Crescent City to fix up some of the f*ck up piggos. Grab those hi-powered deer rifles, each and every, and get in groups of 50 and more and go breeze away to dust the skull of the police chief.

Make and example of that scum. That should do it for awhile. However, if any other piggos down at the station give you crap on this or get in the way, then blow their skulls off, too.

(Comp. Ex. A.)

Appendix 54

1 On April 8, 2004, the Del Norte County
2 Sheriff's Department arrested Plaintiff and
3 removed two computers and two handguns from
4 the arrest location. (Compl. parag. 5.) Defendants
5 charged Plaintiff with violating Cal. Penal Code
6 sect. 71.³ (*Id.* parag. 25.) Plaintiff's criminal jury
7 trial began on September 26, 2005. (*Id.* parag 121.)
8 Following his conviction, the trial court sentenced
9 Plaintiff on October 27, 2005.⁴ However, on June
10 17, 2006, the appellate court overturned Plaintiff's
11 conviction. (*Id.* parags. 5,10.)

12 On August 30, 2004, Plaintiff filed a notice
13 of claim titled "Government Claim For Damages
14 and Injunctive Relief (Government Code 910)."
15 (*Id.* Ex.2.) Plaintiff's government claim against
16 Defendants alleged the same causes of action
17 against the same list of of Defendants as does
18 Plaintiff's current Complaint. (*Id.*) Plaintiff alleges
19

20 ³ "Threatening Public Officers and Employees and School Officials." Cal.
21 Penal Code sect. 71.

22 ⁴ See Plaintiff's Exhibit 4, Docket No. 4
23
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Appendix 55

1 that he filed the claim within the statutory of
2 limitations period for such a claim. (*Id.* parag. 7.)
3 Plaintiff's administrative claim was rejected on
4 October 15, 2005. (Declaration of John Vrieze
5 ("Vrieze Decl.") parag. 9, Ex. H.)

6 On January 8, 2007, Plaintiff filed the
7 operative complaint now before this Court.
8 Plaintiff's Complaint alleges federal claims for relief
9 against Defendant for violation of his rights under
10 the First, Second, and Fourth Amendments of the
11 United States Constitution. (*Id.* parags 215, 234,
12 236.) Plaintiff's complaint also alleges state law tort
13 cause of action for intentional infliction of
14 emotional distress, assault, battery, malicious
15 prosecution, trespass, conversion of personal
16 property, and false imprisonment. (*Id.* parags.
17 222,224,226,228, 230.) Plaintiff seeks damages of
18 \$1.36 billion. (*Id.* parag. 106.)

LEGAL STANDARD

A. Subject Matter Jurisdiction

21 Federal Rule of Civil Procedure 12(b)(1)
22 authorizes a party to move to dismiss a claim for
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Appendix 56

1 lack of subject matter jurisdiction. Federal courts
2 are courts of limited jurisdiction; thus, the Court
3 presumes lack of jurisdiction, and party seeking to
4 invoke the court's jurisdiction bears the burden of
5 proving that subject matter jurisdiction exists. See
6 *Kokkonin v. Guardian Life Ins. Co.*, 511 U. S. 375,
7 377 (1994). A party challenging the court's
8 jurisdiction under Rule 12(b)(1) may do so by
9 raising either a facial attack or factual attack. See
10 *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).

11 A facial attack is one where "the challenger
12 asserts that the allegation contained in a complaint
13 are insufficient on their face to invoke federal
14 jurisdiction." *Safe Air for Everyone v. Meyer*, 373
15 F.3d 1035, 1039 (9th Cir. 2004). In evaluating a
16 facial attack to jurisdiction, the Court must accept
17 the factual allegations in plaintiff's complaint as
18 true. See *Miranda v. Reno*, 238 F.3d 1156, 1157 n. 1
19 (9th Cir. 2001). For a factual attack, in contrast, the
20 Court may consider extrinsic evidence. See *Roberts*
21 *v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987).
22 Further, the court does not have to assume the
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Appendix 57

1 truthfulness of the allegations, and may resolve any
2 factual disputes. See *White*, 227 F.3d at 1242. Thus,
3 "[o]nce the moving party has converted the motion
4 to dismiss into a factual motion by presenting
5 affidavits or evidence properly before the court, the
6 party opposing the motion must furnish affidavits
7 or other evidence necessary to satisfy its burden of
8 establishing subject matter jurisdiction." *Savage v.*
9 *Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2
10 (9th Cir. 2003).

11 In the Ninth Circuit, "[j]urisdictional
12 dismissals in cases premised on federal-question
13 jurisdiction are exceptional, and must satisfy the
14 requirements specific in *Bell v. Hood*, 327, U.S. 678
15 [] (1946)." *Sun Valley Gas., Inc. v. Ernst Enters.*,
16 711, F.2d 138, 140 (9th Cir. 1983); see *Safe Air for*
17 *Everyone*, 373 F.3d at 1039. The Bell standard
18 provides that jurisdictional dismissals are
19 warranted "where the alleged claim under the
20 [C]onsitution or federal statute clearly appears to
21 be immaterial and made solely for the purpose of
22 obtaining federal jurisdiction or where such a claim
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Appendix 58

is wholly insubstantial and frivolous." 327 U.S. at 682-83. Additionally, the Ninth Circuit has admonished that a "[j]urisdictional finding of genuinely disputed is inappropriate when 'the jurisdictional issue and substantive issues are so intertwined that the question of jurisdiction is dependent on the resolution of factual issue going to the merits' of an action." *Sun Valley*, 711 F.2d at 139. The jurisdictional issue and the substantive issues are intertwined where "a statute provides the basis for both the subject matter jurisdiction of the federal court and plaintiff's substantive claim for relief" *Safe Air for Everyone*, 373 F.3d at 1039 (quoting *Sun Valley*, 711 F.2d at 139).

B. Motions to Dismiss

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a claim. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Because the focus of a Rule 12(b)(6) motion is on the legal sufficiency, rather than the substantive merits of a claim, the Court ordinarily limits its review to the face of the

Appendix 59

1 complaint. See *Van Buskirk v. Cable News*
2 *Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002).
3 Generally, dismissal is proper only when the
4 plaintiff has failed to assert a cognizable legal
5 theory or failed to allege sufficient facts under a
6 cognizable legal theory. See *smileCare Dental*
7 *Group v. Delta Dental Plan of Cal., Inc.*, 88 F.3d
8 780, 782 (9th Cir. 1996; *Balisteri v. Pacifica Police*
9 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1988);
10 *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d
11 530, 534 (9th Cir. 1984). Further, dismissal is
12 appropriate only if it appears beyond a doubt that
13 the plaintiff can prove no set of facts in support of a
14 claim. See *Abramson v. Brownstein*, 897 F.2d 389,
15 391 (9th Cir. 1990). In considering a Rule 12(b)(6)
16 motion, the Court accepts the plaintiff's material
17 allegations in the complaint as true and contrues
18 them in the light most favorable to the plaintiff. See
19 *Shwarz v. United States*, 234 F.3d 428, 435 (9th
20 Cir. 2000).

21 A court may dismiss a complaint pursuant to
22 Federal Rule of Civil Procedure 12(b)(6) for the
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Appendix 60

1 pleading of insufficient facts under an adequate
2 theory. *Robertson v. Dean Witter Reynolds, Inc.*,
3 749 F.2d 530, 533-34 (9th Cir. 1984). When
4 deciding upon a motion to dismiss pursuant to
5 Rule 12(b)(6), a court must take all of the material
6 allegations in the plaintiff's complaint as true, and
7 construe them in the light most favorable to the
8 plaintiff. *Parks School of Business, Inc. v.*
9 *Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).

10 In the context of a motion to dismiss, review
11 is limited to the contents in the
12 complaint. *Allarcom Pay Television, Ltd. v.*
13 *General Instrument Corp.*, 69 F.3d 381, 385 (9th
14 Cir. 1995). When matters outside the pleading are
15 presented to and accepted by the court, the motion
16 to dismiss is converted into one for summary
17 judgment. However, matters properly presented to
18 the court, such as those attached to the complaint
19 and incorporated within its allegations, may be
20 considered as part of the motion to dismiss. See
21 *Hal Roach Studios, Inc. v. Richard Feiner & Co.*,
22 896 F.2d 1542, 1555 n.19 (9th Cir. 1989). Where a
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Appendix 61

1 plaintiff fails to attach to the complaint documents
2 referred to therein, and upon which the complaint
3 is premised, a defendant may attach to the motion
4 to dismiss such documents in order to show that
5 they do not support the plaintiff's claim. *See Pacific*
6 *Gateway Exchange*, 169 F. Supp. 2d at 1164;
7 *Branch v. Tunnell*, 14 F.3d 449, 44 (9th Cir. 1994)
8 (overruled on other grounds). Thus, the district
9 court may consider the full texts of documents that
10 the complaint only quotes in part. *See In re Stay*
11 *Electronics Sec. Lit.*, 89 F.3d 1399, 1405 n.4 (1996),
12 cert denied, 520 U.S. 1103 (1997). This rule
13 precludes plaintiffs "from surviving a Rule 12(b)(6)
14 motion by deliberately omitting references to
15 documents upon which their claims are based."
16 *Parrino v. FHP, Inc.*, 146 F.3d 699, 705 (9th Cir.
17 1998).

ANALYSIS

A. Subject Matter Jurisdiction.

1. Eleventh Amendment Bar on Federal Court Claims Against State Actors

Appendix 62

1 Defendant's first argument is that this Court
2 should dismiss Plaintiff's Complaint for lack of
3 subject matter jurisdiction. Defendant contends
4 that the Eleventh Amendment to the United States
5 Constitution bars federal court claims against the
6 State of California and its instrumentalities and
7 agencies, therefore, this Court must dismiss
8 Plaintiff's claims against the State of California.
9 In Plaintiff's Opposition, Plaintiff proffers no
10 cognizable legal theory opposing Defendant's
11 contention. As explained below, the Court finds
12 that it does not have subject matter jurisdiction
13 over Plaintiff's claims against Defendant.

14 The Eleventh Amendment provides that
15 "[t]he Judicial power of the United States shall not
16 be construed to extend to any suit in law or equity,
17 commenced or prosecuted against one of the
18 United States by Citizens of another State, or by
19 Citizens or Subjects of any Foreign State." U.S.
20 Const. amend. XI. Fundamental Eleventh
21 Amendment doctrine provides that states cannot
22 be sued in federal court, absent their consent. *See*
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24
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Appendix 63

1 *Papasan v. Allain*, 478 U.S. 265, 276 (1986). The
2 Eleventh Amendment prohibits federal courts from
3 hearing suits brought against a state without the
4 state's consent. *Brooks v. Sulphur Springs Valley*
5 *Elec. Co.*, 951 F.2d 1050, 1053 (9th Cir.1991). The
6 Eleventh Amendment's jurisdictional bar covers
7 suits "naming state agencies and departments as
8 defendants, and applies whether the relief sought is
9 legal or equitable in nature." (*Id.*) The Amendment
10 thus is a specific constitutional bar against hearing
11 even federal claims that otherwise would be within
12 the jurisdiction of the federal courts. *Pennhurst*
13 *State School & Hosp. v. Halderman*, 465 U.S. 89,
14 120 (1984). This constitutional bar applies to
15 pendent claims as well. *Id.*

16 Because Plaintiff's Complaint raises federal
17 claims and state law claims against the State of
18 California and the state does not consent to be
19 sued, the claims are barred by the Eleventh
20 Amendment. For this reason the court grants
21 Defendant's motion to dismiss pursuant to Rule
22 12(b)(1).

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Appendix 64

CONCLUSION

For the foregoing reasons, the Court **GRANTS**
Defendant's Motion to Dismiss **WITH**
PREJUDICE.⁵

IT IS SO ORDERED.

Dated: June 21, 2007 s/MARTIN J. JENKINS
UNITED STATES
DISTRICT JUDGE

⁵ Because the Court finds that it does not have subject matter jurisdiction over Plaintiff's federal or state claims, the Court need not address Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted.

Appendix 65

John Gimbel
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707.464.5908
Appellant/plaintiff
in pro se

Filed
Jan. 25, 2008
Cathy A. Catterson, clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS NINTH CIRCUIT

JOHN GIMBEL
Appellant/Plaintiff,

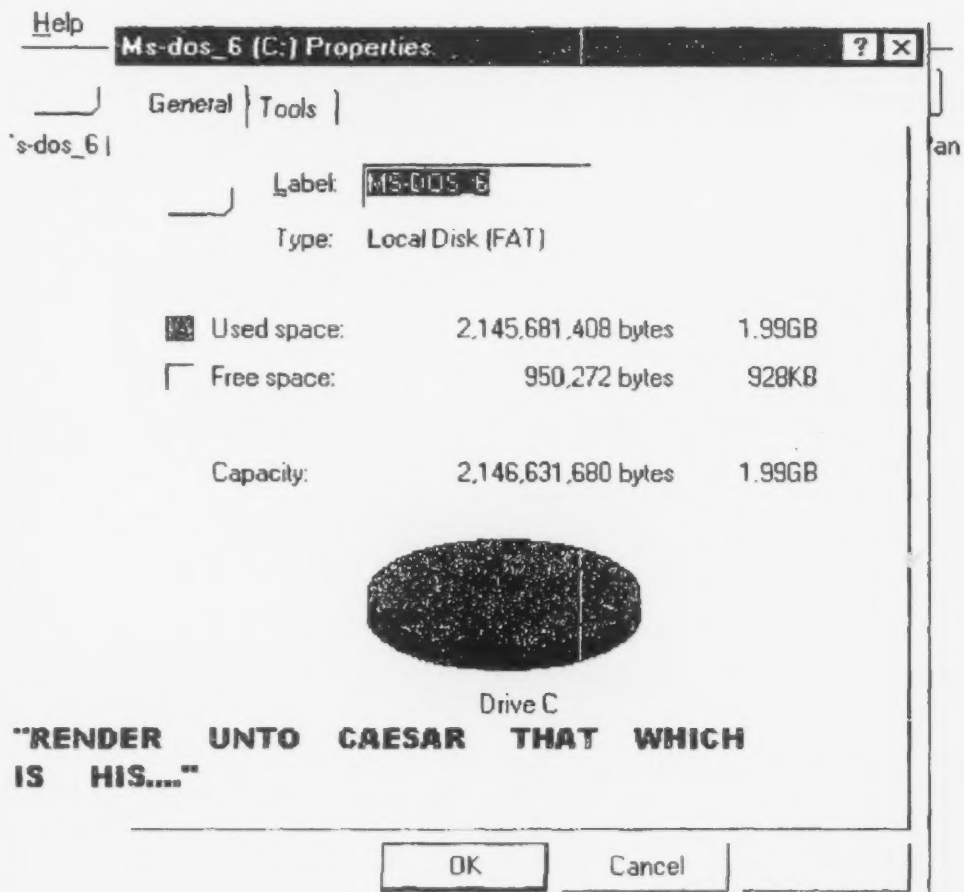
CASE NO. : 07-16966
(DISTRICT COURT NO.
C07 0113 MJJ-SBA)
APPELLANT'S REPLY
BRIEF TO ALL
DEFENDANTS

STATE OF CALIFORNIA, DEL NORTE
COUNTY SHERIFF'S DEPARTMENT,
JERRY HARWOOD, BILL STEVEN, GENE
McMANUS, MELANIE BARRY, DANA RENO,
ROBERT BARBER, ED FLESHMAN,
CRESCENT CITY
POLICE DEPARTMENT,
DOUGLASS PLACK, GREG JOHNSON, JAMES
HOLT, CALEB CHADWICK, THOMAS
BURKE, DEL NORTE DISTRICT ATTORNEY,
KEITH MORRIS, AC FIELD, MICHAEL RIESE,
DARREN McELFRESH, AND FRITZ
LUDERMAN

Respondents/Defendants

Appendix 66

**"RENDER UNTO CAESAR THAT
WHICH IS HIS...."**



...
Sad case, this county lawyer,
Mr. Vrieze; he presents nothing more
to this appeal court than the same

Appellant's Reply Brief to All Defendants 07-16966

Appendix 67

1 diatribe he used against the 6-page
2 aspect of the amended complaint in
3 his motion to dismiss amended
4 complaint. Identical.

5 Here in my Appellant's Opening
6 Brief, I have nicely raised dozens of
7 novel issues conjunct this case of
8 relative, new-net-yet, first
9 impression, and he has avoided them
10 all like the plague.... Please make
11 stringent note of that.

12 Then throwing the skimpy
13 Plaintiff's 6 pg. Amended Complaint
14 into his "Supplemental Record,"
15 (SER, pgs. 1-6), he (Mr. Vrieze) is
16 now trying to hide that...THE
17 PLAINTIFF'S REAL AMENDED
18 COMPLAINT WAS THE NEAR 2
19 INCH THICK DECLARATION I
20 SUBMITTED WITH IT, QUIET
21 AND SURE DOCUMENTS
22 THEREIN THAT I HOPED

Appendix 68

1 REPRESENTED THE CURE.... In it
2 are 8 authenticated and declared
3 documents to substantiate and verify
4 allegations, including trial transcripts
5 for the speech. For general
6 reference, same declaration is in ER,
7 tab 8, where you note docket 53. If I
8 may suggest same declaration to be
9 incorporated here as if fully
10 incorporated herein.... At this point,
11 may I ask the court's indulgence. The
12 declaration is thick, and my printer
13 would be going for a month. Lately,
14 for every print job on this runt
15 machine, I've been getting never-
16 before error messages, and have to
17 reboot several times throughout a
18 print job to gain fresh RAM that the
19 operation seems to need. It could
20 actually take 2 months going this
21 way. But let me tear my unhealthy
22 heart out for this case, before this

23
24 Appellant's Reply Brief to All Defendants 07-16966
25
26

Appendix 69

1 court, getting over to it somehow,
2 getting the court its demand should it
3 be so--should you just hit me with an
4 e-mail to johngimbel@charter.net
5 saying you want 15 plus one original
6 of that declaration (or some stated
7 number)--I'll do it right away and
8 nothing else until it's done, serving it
9 (2 for each or some designated
10 number) also on all parties. Yes, I
11 will.

12 ((Just noticing Mr. Ayres for his
13 defendants did the same thing: threw
14 the skimpy, 6-pager amended
15 complaint out there (AER pgs. 11-16)
16 while obviously trying to hide
17 completely the immense work-
18 declaration that was submitted
19 integral with the 6 pg. amended
20 complaint.))

21 Gentlemen, I have grieved now
22 by every second for 4 years straight

23 Appellant's Reply Brief to All Defendants 07-16966
24
25
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Appendix 70

1 since they dragged out of my living
2 room, never to see it again, the
3 \$6,000 computer mentioned in the
4 AOB, the only "box" I've ever been
5 married to (never had a human
6 spouse). This was my loved one. I'm
7 58. We were in danger of being
8 happy.

9 Gentlemen, it is dire; per the
10 behaviors of this eroding machine, I
11 am obstructed now from merely
12 putting down my thoughts in writing.

13 Gentlemen, I am an emergency
14 ripped out now for nearly 4 years and
15 starved. I ask this court to relief-it
16 for me now with the full finding for
17 plaintiff, (not even to trial, if that's
18 possible, and I think it is), the same
19 as summary judgement in the full.
20 They can appeal it; the money won't
21 be touched until, if and when it may
22 become final--a promise--but I need

Appendix 71

1 to be taken off this cross which has
2 defaced, extracted, destroyed, mauled
3 and enslaved involuntarily everything
4 I ever was or hoped to be....

5 In talking with a constable the
6 other day who asked me if there were
7 any diagnoses of this rendition, I told
8 him I simply knew well I'm long
9 since some type of what they call an
10 "internal decapitation," only a kind
11 invoked by an erosion, conjunct
12 forced, unwanted, daily-recurring
13 posturing and cramped, involuntary
14 writing. Having run across an article
15 some months ago on such, I saw
16 myself squarely in it...forced standing
17 by the years to the slow, extreme
18 dullard and donkey they married me
19 to instead, for the final amusement.

20

21

22

23

24

25

26

Appendix 72

Thank you, gentlemen.

Dated: _____ s/John Gimbel
 ¹John Gimbel
 Appellant/Plaintiff,
 in pro se

¹ With this attestant signatory, I leave myself open to any questions the court may have, answers to be submitted either in writing or orally, upon any matter the court would like some additional answers or focus.

Appellant's Reply Brief to All Defendants 07-16966

Appendix 73

John Gimbel
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Crescent City CA
95531
707.464.5908
Plaintiff, in pro se

ORIGINAL FILED
Feb 21 2008
RICHARD W. WEIKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF
CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN GIMBEL
Plaintiff

CASE NO.: 07-5816 CRB
PLAINTIFF'S COMBINED
OPPOSITIONS TO ALL
DEFENDANTS'
MOTIONS TO DISMISS
COMPLAINT

v.

FRANK VILLARREAL, DEL NORTE
DISTRICT ATTORNEY, DEL NORTE
SHERIFF'S DEPARTMENT, DEL NORTE
SUPERIOR COURT (FOLLET), UNNAMED
ACCOMPLICE "DOE" TO VILLARREAL,
DEL NORTE COUNTY, STATE OF
CALIFORNIA

Defendants

Date: March 21, 2008
Time: 10 AM
Courtroom 8, 19th floor

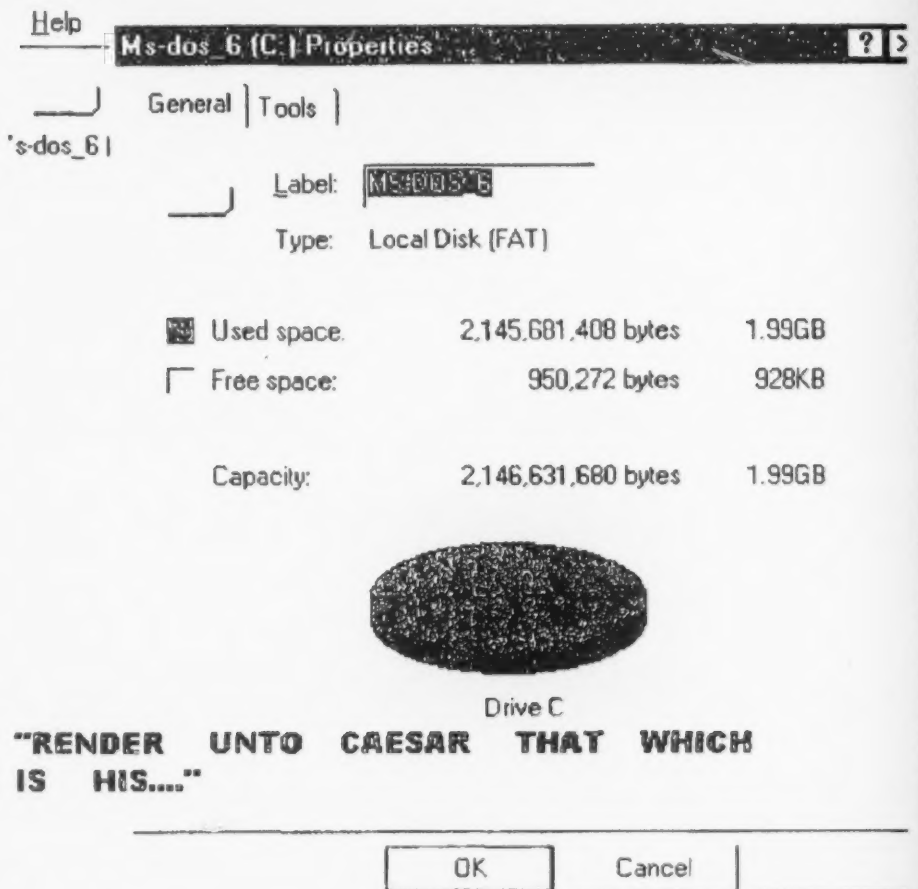
Appendix 74

I have run out of machine, all resources (picture, pg. 2). Two score and 8 months ago (near 4 years), an 18 man SWAT team took my life away from me at my front door for protected speech (07 0113 SBA). They have not returned anything, any possessions or any amendments to date. I cannot take from the hand that bit me. This ¹machine (pic, pg. 2) has really denied me all that the net is for 4 years straight. I have suffered upon it as a cross, filling its harddrive to where it can do no more--it crashes at every turn because the drive has been filled with (only) the cases, the burdens of crosses the armed state has put on me for protected speech. It bucks, crashes, every few

¹ This machine is mentioned in complaint, paragraphs 79, 114, end para. 299.

Appendix 75

**"RENDER UNTO CAESAR THAT
WHICH IS HIS...."**



paragraphs like a donkey bucking over
those who slaughter him, can go no more.
The machine in exhibit A was my wife, a

Combined answer to defendants' motions to dismiss cv07-5816 CRB

Appendix 76

1 \$6,000 machine I have been denied
2 through 4 years straight. Only this paper
3 certificate remained with me throughout
4 the years. I have watched through the
5 cracks of time's house, and seen a fat state
6 and defendants, merely that they took her
7 years ago, ass raping her daily, across the
8 years, and my soul daily. They do this
9 also to all the other items they took, never
10 returned, and all the amendments they
11 never returned. They have gorged
12 themselves daily and nightly for years
13 now, in revel with their booty they took
14 for protected speech. On the other side of
15 the wall I "can hear them" but never
16 touch her or do anything. They are the
17 Father of Lies to me. "I cannot take from
18 the hand that bit me" is as valid as anyone
19 who believes you do not "Bite the hand
20 that feeds." Think about it; it's correct. To
21 the courts I have plead formally, only with
22 this scanty machine-cross, across the

23 Combined answer to defendants' motions to dismiss cv07-5816 CRB
24
25
26

Appendix 77

1 years, until it's filled now, stacks of formal
2 briefs near high as a man now. No Feds,
3 no God has ever intervened in their wild
4 party against me. I am now
5 COMPLETELY obstructed from further
6 writing or merely writing down my
7 thoughts.

8 Gentlemen, I have grieved now by
9 every second for 4 years straight since
10 they dragged out of my living room,
11 never to see it again, the \$6,000 computer,
12 exhibit A, the only "box" I've ever been
13 married to (never had a human spouse).
14 This was my loved one. I'm 58. We were
15 in danger of being happy.

16 I have been denied my wife for
17 centuries now, it feels. The "process" of
18 seeking restoration before the court is a
19 sledge hammer blow of enslavement and
20 denial yet further, feeling a perfect "mal-
21 linger" of fate every morning for years
22 now, then all day, as I starve for what I

Appendix 78

1 once knew. Neither will I start eating food
2 to replace my grief. This plaintiff waived
3 food 4 years ago, saying, "God, return my
4 love at once for this protected speech in
5 the net case, and make the right amends."
6 Plaintiff's marrow has been extracted by
7 these infamous sands of time, destroying,
8 defacing, mauling him this way....

9 I have been in a deadly chokehold
10 of deformity and starvation since the day
11 they emptied my soul for protected
12 speech. I am now an intense emergency
13 from this whole thing. While we were
14 already 2 years of that...came Villarreal....
15 They are wrong; the complaint tells it
16 true.

17
18 Dated _____ s/John Gimbel

19 John Gimbel in pro se
20
21
22
23

Appendix 79

EXHIBIT A



ADVANCED

CYBERWORKS

COMPUTER SYSTEMS • UPGRADES • REPAIRS • SOFTWARE

Enhanced TradeStation Computer System

Designed for John Gimble Exclusively

**AMD XP 2000 MHz CPU = 266 MHz FSB, 512 L2
CacheMemory MSI KT3 Ultra 2-BR (6380E-060BT)**

Motherboard

**w/RAID, Bluetooth Function and USB 2.0 - Chipset:
KT333+VT8235, FSB: 100/133 MHZ.**

**RAM: 3x DDR: DDR266/333 184-pin Max 3GB, IDE: 2x
Ultra**

DMA133/100/66/33 Up to 4 Devices.

**SLOTS: 5x PCI (32-bit), 1 AGP(AGP 2.0 1x/2x/4x); Ports: 1x
FDD, 2x COM, 1x LPT, 2x USB 2.0**

**Onboard Audio: ALC650 6-channel audio; Onboard RAID:
Promise 20276 ATA 133 Onboard Bluetooth: Bluetooth
connector for Bluetooth module.**

3x 1024 MB CRUCIAL 32x64 PC 2100 DDR RAM

Memory CAS 2 - 1.4MB 3.5 INCH INTERNAL FDD

DRIVE-

**(2) WESTERN DIGITAL 80GB 7200RMP HARD
DRIVES-**

"SPECIAL EDITION" 8MB Cache Buffer Ultra 100 8.0

Cache Buffer 8.9ms Average Seek Time

Combined answer to defendants' motions to dismiss cv07-5816 CRB

Appendix 80

Lite On 40X12X48 CDRW Specifications: Recording
40X(6000KB/sec) Z-CLV (20X, 24@8min, 32X@18min,
40X@53min) Re-writing 12X High-Speed (1800KB/sec)
CLV
Reading 48Xmax (7200KB/sec) CAV (20X~48X) Interface:
ATAPI-E/IDE, support up to Ultra-DMA Mode2,
33.3MB/sec Buffer Memory Size: 2MB SMART-BURN
(TM) technology Under run protection,
ATI RADEON 8500 128MB DDR AGP Connect digital
camcorder to a PC Digital and analog video capture & editing
Radio-frequency remote control Stereo TV-tuner TV-ON-
DEMAND Time shifting Interactive Program Guide DVD
video playback with Dolby(tm) AC-3 digital audio output.
PIONEER INTERNAL ATAPI 16X DVD-ROM 40X CD-
ROM - 256k buffer 95ms DVD-Rom High-Speed Average
Access Time 80ms CD-ROM access time. High-Speed
Average Access Time-95ms DVD-ROM-80 ms CD-ROM.
Reads single and dual layer DVD-ROM/Video, -R/RW, CD-
ROM, Audio CDs, CD-R/RW, Video CDs, Photo CDs,
Hybrid CDs, CD-Extra (CD-Plus) and CD-Texty Discs
Horizontal or Vertical Mounting Capabilities
Antec SC830 Mid Tower Case - The SX830 has a total of 8
drive bays including: three 5.24" external bay, two 3.5"
external bays and three 3.5" internal bays. Dimensions:
20.6"(H) x 8.1"(W) x 18.6"(D). The SX830 comes with four
80 mm fans.

Combined answer to defendants' motions to dismiss cv07-5816 CRB

Appendix 81

EXHIBIT B

This machine is mentioned multiply in case cv 07 0113 SBA, in exhibit 5 (5 pgs.) attached to complaint.

Across these 4 years, more and more sites give me notice "upgrade your system to access our site pages." Some won't load at all, or to even where I can see this message. Across these 4 years, I've become aware when accessing sites that more and more sites keep adding cookies to gather the max information, and that such buildups are only for *modern* machines; mine can't handle it at all. More and more pages that will load eventually can take anywhere from 30 seconds to even fully 10 minutes--to load one web page. On a modern mach. any of these pages would be instantaneous. As an example, my machine has always typically balked when accessing the Northern District U.S. Court website. As an example of what I've had to do, I'm going to go over now to the main San Fran. District Court website and check the judge's standing order, but time how long

Appendix 82

it takes. (Across 4 years I've likely accessed information here over 250 times.) I click my bookmark <http://www.cand.uscourts.gov/> and note that it takes 3 minutes, 18 seconds for the page to load sufficiently where I can see the menu under "judges." I mouse down the menu under judge Breyer and click his standing order. 50 seconds to that pg. I click on the 4th one down, "Judge's standing order" and the .pdf, 2 pages, takes 28 seconds to load (note: most pdf files are inaccessible because I only have Acrobat 4; the newer versions of Adobe are not compatible with my system). The pdf loads in my browser. Since the menu is no longer to the left, I have to click the browser backspace to see more of the judge's menu. That takes about 58 seconds to have the menu visible. I then mouse down the menu to judge's "Rulings and examples," and it takes about 50 seconds to load that page. I then mouse down the menu to the left again, now to judge's "Staff." 58 seconds to load that to view. I now go to Breyer's "Current Calendar," and while it does take only about 4

Appendix 83

seconds to load, the menu to the left disappears. To get back to the judges' menu, I click the browser's back space, and it takes about 52 seconds. I mouse down the judge's menu and click "Judge's Information." This, too, only took about 3 seconds, but the menu to the left disappears, and if I want to check or "re-glance" further any postings by the judge, I have to backspace the browser to the previous page with the judges' menu, and this takes about 55 seconds as I measured it. I will show these timings to anyone.

The above took 9.79 minutes--just these few links.

Now, this federal district site is one of the tougher, but not even atypical of the symptom. I'm not a geek, but I've tried my best to follow what the consumers must know about operation, and I'll bet anyone \$1000 they couldn't tweak or knock any 15 seconds off any of the above timed events on this machine.

Appendix 84

Even if you figure it up, using, say, that I sought to access, on average, the above information about 100 times across 4 years, (which I believe would be minimum), that's 9.7×100 ...computes to ***16.31 hours of just standing waiting for just these few items to load across these 4 years.*** Nearly the cycle of a full day and night *just standing there waiting* for these links to be viewed. That adds up like a knife in the back when you talk extreme bad health, conjunct work and tool. Can you even conceptualize what this takes in the long run from a man and his legal research and obligations through the years, who hasn't even got any health to speak of, going at his legal salvation this way? Or what this tidy little defendant-made arrangement does to your mind? The above timings are, and have been and still are, symptomatic of all attempts to research legal material from the web. Symptomatic of the literal capacity, in EVERYTHING, (and the web), with this machine.

Appendix 85

I have borne a cross. A nice mean one. Dirtier 'n hell, actually across such lengths, because you must show a patience with such, and for protected speech...such patience I've wondered if even God could ever manifest or own short of dead.

"Think" Windows 3.1. You'd be close. Can anyone tell me if the county gave my wife, "mainframe" all these 4 years that I've been on this runt machine-cross, to their fat-paid county lawyer to use against me...(?) While they spilled my life's savings into the dirt this way, myself paying lawyers elsewhere at times to guide an almost blind-me by this--this being our defendants' "little arrangement" for protected speech"?

Even if their lawyers had only Windows 98 and a fairly minimal hardware, they're on a pedestal, feeling as the merrymaking, benefit and amusement to betray me. The infamous sands from put down....

Appendix 86

ATTN: REFORMATTED TO FIT THE SUPR. COURT
BOOKLET, INCREASING THE PG. NOS. AND LINES: THUS,
REFERENCES WITHIN ITSELF TO OTHER LINES
WITHIN ITSELF MAY NOT LAND ON THE ORIGLLY
REFERRED-TO PG. AND LINE

John Gimbel
225 Brevus St.
Crescent City, CA
95531
707.464.5908
Appellant/plaintiff
in pro se

RECEIVED
Cathy A. Catterson, clerk
U.S. COURT OF APPEALS
DEC 10 2007
FILED _____
DOCKETED _____
date initial

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

JOHN GIMBEL

Appellant/Plaintiff,

CASE NO. : 07-16966
(DISTRICT COURT NO.
C07 0113 MJJ-SBA)
APPELLANT'S
OPENING
BRIEF TO ALL
DEFENDANTS

v.
STATE OF CALIFORNIA, DEL NORTE
COUNTY SHERIFF'S DEPARTMENT,
JERRY HARWOOD, BILL STEVEN, GENE
McMANUS, MELANIE BARRY, DANA RENO,
ROBERT BARBER, ED FLESHMAN,
CRESCENT CITY
POLICE DEPARTMENT,
DOUGLASS PLACK, GREG JOHNSON, JAMES
HOLT, CALEB CHADWICK, THOMAS
BURKE, DEL NORTE DISTRICT ATTORNEY,
KEITH MORRIS, AC FIELD, MICHAEL RIESE,

Appellant's Opening Brief

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Appendix 87

DARREN McELFRESH, AND FRITZ
LUDERMAN

Respondents/Defendants

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JURISDICTION

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Appendix 88

(Also, timeliness of appeal or
petition)

Appellant appeals from an order entered in the U.S. District Court, Oakland, Order document 68 in case C07 0113 SBA, filed Sept. 19, 2007 (see appellant's excerpts of record, tab 8). (Appellant's excerpts of record hereafter "ER.")

There have been 2 motions generated since the order ((also, a complaint generated for judicial disability (or misconduct) pertaining to the district court judge, S.B.A.)). They are: a motion to stay appeal proceedings pending outcome of mot. to disqualify in the dist. court...this mot. to stay filed with the Ninth Circuit, served Nov. 15, filed Nov. 20, 2007; and, a complaint for judicial disability, apparently first

Appendix 89

1 processed about early Nov., 2007, but
2 initially sent about Sept. 19, 2007--
3 presently assigned no. 07-89134. An
4 amended motion to disqualify the
5 district court judge, filed Nov. 19,
6 2007, has also been submitted in dist.
7 court.

8 The foregoing motions and
9 complaint have not been decided yet.

10 Appellant's notice of appeal is
11 file stamped Oct. 18, 2007 (ER, tab
12 9).

13 The District Court docket sheet
14 provided in a sending with their
15 clerk's "certificate of record" and
16 "notice of appeal notification form,"
17 is attached to the excerpts of record
18 filed with this brief, at the end of all
19 excerpts of record as required (ER,
20 tab 10). There appears to exist no
21 entry of judgement to date, other than
22

23

24

25

26

Appendix 90

the order (civil docket entry 68, tab 8 in excerpts of record).

This is appellant's first-ever advent into the Ninth Circuit Court of Appeal on any matter.

In this opening brief appellant will elect to structure his presentation, carefully answering as best he can, using the question and answer format in the in pro se brief form, items 1-10. However, all else is an attempt to present a formal opening brief. The form questions are shown under each new title in caps.

INTRODUCTION

(What are the facts of the case?)

Appellant was arrested on Apr. 8, 2004 (oh four) for speech in an internet forum associated to the site [www. crescentcity95531.com](http://www.crescentcity95531.com). The speech is included here as ER, tab 1

Appendix 91

1 in the excerpts of record (also,
2 general reference: it is exhibit A in
3 orig. complaint). A life he had just
4 started, effectively trading stocks,
5 was removed, along with the
6 expensive custom computer he had
7 someone build for him for that; also,
8 all his 2nd amendment items
9 (handguns) were also removed.
10 Acquittal was unanimous (3 of 3) by
11 the CA superior court, appeal
12 division thereof, after *over 2 years*
13 being dragged through the court
14 system, acquittal received June 18,
15 2006 ((general reference: acquittal
16 opine is exhibit A in the declaration
17 filed as docket 53, appropriately
18 authenticated under civ. local rule 7-
19 5(a) in that declaration)). All of the
20 items taken via the warrant are still
21 missing to date. Appellant has been
22 consistently afraid now for about 4

Appendix 92

1 years, in all to do with this case of
2 speech, to take ANY portion of his
3 life back or resume any pursuits,
4 speech or amendment rights until the
5 defendants are punished from a
6 posture other than the present one
7 wherein defendants believe, so far,
8 they have impunity and immunity for
9 exactly such ripouts of Gimbel
10 whenever they "feel like it"--
11 presently, they would not be deterred
12 to exactly repeat a murderous and
13 illegal ripout of Gimbel's life and
14 pursuits for allowed speech if they
15 were left to believe in their impunity
16 and immunity. They would have no
17 compunctions or conscience and
18 would continue to do illegal ripouts
19 for allowed speech whenever they
20 felt like it, and dragging him further
21 years through the courts.

Appendix 93

Under penalty of perjury, appellant states that ER, tab 1, is the official subject speech that was agreed-upon and stipulated to be same, the subject speech exhibit at trial for the subject speech. It was also included as exhibit A attached to the original civil complaint.

RELIEF THAT WAS SOUGHT AT THE DISTRICT COURT

((What did you ask the district court to do? (e.g., award damages? injunctive relief? etc.))

Request to the court for award of damages and injury were shown and calculated in paragraphs 50-106 in the original complaint, and that is 1,360 million dollars. On May 22, 2007 all defendants' attorneys were duly notified that amount would increase by 10 million dollars for every day forward that plaintiff's

Appendix 94

possessions were not returned to him
with the recompense.

CLAIMS IN THE DISTRICT COURT

((State the claims (and allegations)
you raised at the district court.))

These claims are for damages,
loss and injury for: Violation of First
Amendment; Violation of Second
Amendment; Battery; Assault; False
Arrest; Malicious Prosecution; Illegal
Warrants; Violations of 42 USC
Section 1983; Intentional Infliction of
Emotional Distress; Damage to
Personal Property; Conversion of
Personal Property and Lost Income;
Invasion of Privacy; Trespass.

It's not going to change any
amount of the real damages, but
plaintiff/appellant is willing to
address the foregoing, for the most

Appendix 95

1 part, as a collateral, consolidated 42
2 USC 1983 action, involving First and
3 Second Amendment violations (with
4 emphasis on the state-powered
5 coercion seen as a violative
6 "assault and battery," and the extreme
7 trauma of such lengthy, year over
8 year exposure to an illegal-acting
9 state, as "IIED")--involving severe
10 lengths and exposure to same.

11 Outstanding additionally to the
12 foregoing hugely, lengthy exposure
13 to violations, claimant showed and
14 exposed the defendants
15 EXTREMELY THOROUGHLY
16 across all his complaint, amended
17 complaint, briefs, declarations,
18 exhibits and requests for jud. notice,
19 in two matters: 1. the pretended
20 victim of the subject speech, the chief
21 of police of Crescent City, admitted
22 at trial, on the stand, (Sept. 26, 2005)

Appendix 96

1 in 3 clear instances (ER, tab 2, boxed
2 area, ea. pg.) that *the wording itself of*
3 *the subject speech would never*
4 *happen*. Yet, the courts and system
5 continued to drag decrepit Gimbel
6 forward through the courts for almost
7 a year after that, continuously
8 deprived further, until acquittal came
9 mid June, 2006 as I've said.

10 Gimbel also showed and
11 exposed the defendants in the
12 following: 2. The agent for the
13 district attorney who asked for a
14 warrant in and about Apr. 5, 2004 for
15 the subject speech deliberately
16 attempted to mislead the judge about
17 the posting by leaving out part of the
18 posting, an emoticon smiling smiley
19 with sunglasses, and thereby hid part
20 of the posting from the judge. The
21 full details are worked up hugely in
22 all claimant's writing to the case, all

Appendix 97

1 dockets that be his submissions.
2 Plaintiff/appellant has mentioned and
3 re-focused the material here in these
4 ? items so many times in those near-
5 thousands pages it is likely he will
6 miss enumerating them all:

7 For a general reference:

8 Item 1, in before the previous
9 paragraph, appears in: In original
10 complaint, docket 1: para 25, 172;
11 also, in exhibit D attached to orig.
12 complaint. It appears in original
13 Plaintiff's Opposition to Dismiss,
14 docket 36, and it's mentioned and
15 submitted as evidence in about 11
16 instances in those 15 pgs.; a bit long
17 to list here. It appears in plaintiff's
18 docket 39, req. for jud. notice, pg. 2,
19 line 1. Also, in docket 43, plaintiff's
20 opposition to city defendants' 2nd
21 motion to dismiss, pg. 6, line 4; pg. 7,
22 line 20; pg. 17, line 2; pg. 17, line 23.

Appendix 98

1 There are likely other places plaintiff
2 has discussed it. The whole damn
3 case needs to be reviewed *in the first*
4 *place*.

5 For a general reference:

6 Item 2 in the paragraph before
7 the previous appears in: Amended
8 complaint, docket 52, pg. 4, lines 1-7.

9 It appears in plaintiff's Combined
10 Oppositions...to Motions to Dism.

11 Amended Complaint...,docket 62, pg.

12 6, lines 15-18. It appears in the decl.

13 filed with amended complaint, docket

14 63, pg. 2, item 3. It appears in

15 plaintiff's opposition to county

16 motion to dismiss. original complaint,

17 docket 36, pgs. beginning with line 9,

18 discussion forth. Further showing of

19 this cover up of the evidence in Item

20 2 by other agencies, sheriff, d.a., also

21 appears in the original complaint,

22 docket 1, paragraphs 108, 109. It

Appendix 99

1 appears also in exhibit E attached to
2 original complaint, docket 1, and is
3 document ("doc") 4 within exh. E.
4 I've undoubtedly overlooked a few
5 other places it appears. The full
6 affidavit for warrant, showing the
7 deliberate hiding of part of the
8 posting, expression, (the emoticon) is
9 shown the court in docket 53, a
10 declaration to certify official papers,
11 submitted with amended complaint,
12 being exhibit B attached to that
13 declaration.

14 Note that in places shown above
15 where Items 1 and 2 appear in
16 plaintiff's dockets, discussion on the
17 items within the briefs, answers, etc.,
18 may continue well past the mark
19 indicated--or actually start a bit prior
20 to the mark indicated.

21

22

23

24 Appellant's Opening Brief

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25

26

Appendix 100

Further unacceptable violations of the First Amendment I showed the district court:

((Before proceeding, let me backtrack and fill in the detail, that, as a matter of record, the charge of CA pc 71 with which Gimbel was dragged through trial for years for the subject speech, alleged solely the police chief, Douglass Plack, as "the victim" (ER, tab 5; see heavy line around "Count 1"; see another heavy line-box therein around "Plack...etc."; the pc 415 charge was dropped at pretrial noting the website automatically screened out un-asterisked profanity). Keep in mind, too, that Plack confesses he was the *sole initiator of the charges against the speech*, (ER, tab 6), which meant, therefore, he was *the reason* the charges would continue to deprive

Appendix 101

1 claimant for years and years before
2 acquittal came. He therefore also
3 demanded the sheriff arrest me. He
4 therefore was the one who kept the
5 charges running for years, and now
6 near a half decade of denial floated
7 against me.)).

8
9 Now, keeping in mind that I just
10 showed you that he confessed in a
11 way that he knew all along *the*
12 *expressed words as painted would*
13 *never happen...* (ER, tab 2)...

14 ...In addition to being the above
15 initiator (pol. chief) of all the
16 charges, where we PROVED that HE
17 KNEW, by his own testimony, (ER,
18 tab 2), the expression, a portrait of
19 words under the First Amendment,
20 would never happen, this man also
21 made other damning confessions at
22 trial which I pointed out in the

Appendix 102

1 claims, allegations and briefs, which
2 should have this court hoppingly
3 wrathful to slam such usurpation of
4 speech to full recompense--
5 usurpation for this cop's personal
6 aggrandizement and direct lying,
7 wrought by nothing less than the
8 state's and county's armadas against
9 the spindly, decrepit claimant.

10 ANOTHER SUCH confession
11 by this police chief, showing willful,
12 deliberate and cognizant thrust by
13 this hi-powered cop to condemn
14 protected speech, at the expense to
15 claimant of untold suffering, unfurled
16 when he additionally admitted
17 bluntly at trial Crescent City has not
18 had, *does not have* any \$5 parking
19 ticket. (ER, tab 3).

20 AND YET FURTHER:
21 "Gimbel has not gotten any parking
22

23

24

25

26

Appendix 103

1 tickets." (ER, tab 7, ¹hand-pagination
2 at bottom center, pg. no. 1).

3 Claimant showed the district
4 court this reeks of a state powered
5 cop-run criminal enterprise for sport
6 and self-aggrandizement, against any
7 form of speech, which this
8 claimant/appellant has suffered now
9 for nearly 4 years, for nothing more
10 than calling a cop an idiot in the spirit
11 of caustic political hyperbole. This
12 reeks of criminal-styled activity
13 against the First Amendment, as if for
14 sport, and by persons under color of
15 law no less!

16 Put it together, appeal court.
17 Blatant, willful, deliberate ignore of
18 the First. There's YET more to nail
19 this guy:

20

21 ¹ All pagination in all excerpts will be by hand, bottom
22 center, black marking pen.

23

24 Appellant's Opening Brief

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25

26

26

Appendix 104

1 AND ON TOP OF
2 THAT...HERE'S WHAT MORE:

3 Here we have him further lying about
4 what the post actually says:

5 Here we looked at, (and hoped
6 the dist. court would read the stuff we
7 handed them), that his imagination is
8 run off, and that he IS NOT
9 READING THE POST AT ALL
10 except to insert the lie to confuse the
11 court, the lie he prefers to pretend:
12 He specifically states at one point in
13 the trial, pg. 51 of trial transcripts,
14 "Because I don't know if he did not
15 get a \$5 parking ticket years ago...."
16 (ER, tab 7, hand-paginated pg. 2,
17 boxed in area). But the questioner
18 catches him in total disarray, lie, and
19 his attempt to co-opt his lie to the
20 court moments later, in a cross
21 examination on pg. 56 of the trial
22 transcripts (ER, tab 4), when he asks

Appendix 105

1 Plack, "But you {said you} didn't
2 know if he'd gotten one some time in
3 the past; isn't that correct, sir? (Ans:
4 "Yes, sir.") Next Q: "This {post}
5 says--JUST says--'got a \$5 ticket.' So
6 this person is claiming 'I JUST got
7 one'; right?" (Ans: "Yes.") Q: "And
8 you understood that when you read
9 it?" (Ans: "Yes.")

10 TO APPEAL COURT on the
11 preceding: Here's where the man lies
12 blatantly against the First
13 Amendment. 1. He pretends he's
14 taking the post literally which gives
15 him so called authority, power to go
16 out and remove someone's life. 2. But
17 then he's saying "I don't want to see
18 that Gimbel posted 'Just got a ticket,'
19 so I'll pretend the posting is saying
20 Gimbel 'may have got a ticket years
21 ago' (ER, tab 7,

Appendix 106

1 hand-paginated no. 2). But, I'll also
2 play along with these 'fools' in this
3 courtroom and oppositely 'Ay-say,'
4 nod and pretend I understand it says
5 'Just got a ticket...' " (ER, tab 4).
6 "They're too stupid to sort it, because
7 I'm here on the trial stand with my
8 gun in my holster wreaking my
9 particular brand of coercion." (Plack
10 took the stand fully armed--appellant
11 swears this under perjury). 3. But,
12 additional to the twisting of words
13 and his own lying and inconsistency,
14 above, he has admitted since day 1
15 that Gimbel has not had any parking
16 tickets since the beginning of 2004,
17 as far as his system could check (ER
18 tab 7, hand-paginated no. 1, pertinent
19 info boxed in thick line; this is pg. 13
20 of the pol. report for when appellant
21 was arrested, the entire pg. 13 was
22 *written by Plack.*)

Appendix 107

1 *TO THIS APPEAL COURT: By*
2 *all this he's admitting he can't read,*
3 *can't think, can't understand, is*
4 *perfectly lying and inconsistent from*
5 *the beginning, is altering the very*
6 *words of the subject speech to suit his*
7 *pretense, and has appointed himself*
8 *to kill people who merely exercise*
9 *their right of speech. The cop is lying*
10 *as to content with the subject speech*
11 *just so he can murder this claimant*
12 *with the system. The court is*
13 *mesmerized by this Satan cop. He*
14 *lied freely when he pretended he*
15 *understood "just got a..." when*
16 *moments before that he pretended the*
17 *statement said "got one years ago...."*

18 To rehash the above a bit
19 differently, he's trying to lie to the
20 court that firstly he's taking it all
21 "literally" (proved by his initiating
22 charges and arrest); because, then,

Appendix 108

1 where the post says, "Just got a \$5
2 parking ticket" he comes right along
3 trying to deceive the court by
4 specifically saying now that means "I
5 got one years ago." (ER, tab 7, hand-
6 paginated no. 2). THE POSTING
7 SAYS NO SUCH THING ABOUT A
8 TICKET YEARS AGO, TO
9 ANYONE, OR TO THIS COP
10 PRETENDING TO TAKE
11 EVERYTHING LITERALLY. The
12 "literal" is ostensibly "just got..." and
13 NOTHING ELSE, CLEARLY. THE
14 MAN IS INSANE. This cop should
15 plead insanity in this civil case. He's
16 unable to read at all. He's essentially
17 perjuring the content of the posting in
18 full public view. And the court
19 should have kicked this chief out on
20 his ear right there.

21 The speech was doctored by
22 this Satan cop. He slipped one by and

Appendix 109

1 mesmerized the jury with his Satan
2 spell on this one, clearly, and this
3 appeal court should ANGRILY order
4 immediate recompense for this
5 outrage of perjury, deception,
6 lying, imagining things in the posting
7 subject speech to suit his self-
8 aggrandizing sport, and now
9 consummated half-decade long
10 denials of a wronged man... this
11 chief's strange sport, like an
12 "american-made Bataan residence
13 march," which he did set against
14 citizen Gimbel's legitimate First
15 Amendment, and multiple
16 amendments, so that he could rob
17 Gimbel now for nearly 4 years....

18 To demonstrate the foregoing,
19 that the violation of the First, Second
20 and no probable cause (4th) exists in
21 the entire case, now having blown
22 away a man's life and pursuits for

Appendix 110

1 nothing, say Bill comes up to a chief
2 and says, "Joe hit me with his car 5
3 minutes ago." The chief knows
4 specifically Joe was with him in his
5 office the last 4 hours, all morning,
6 and says, "Joe was exactly with me
7 the last 4 hours." (Same as I know
8 Gimbel did not get a ticket recently;
9 ER, tab 7, hand-paginated no. 1).

10 Is the chief going to start
11 thinking anywhere that Bill MEANS
12 "Joe hit me 1 YEAR AGO with his
13 car."? Or "4 months ago on New
14 Year's, 2004"? NO ONE--NO ONE--
15 would EVER ask or think this. *It's*
16 *just not part of the speech*, the final
17 *portrait* of words hung there. Except
18 this insane cop trying to lie and
19 beguile the court. The chief's
20 inserting the totally insane lie he felt
21 like into the post, lying that it could
22 even remotely mean Gimbel got a

Appendix 111

1 parking ticket years ago--this is
2 insane the same way as the example.

3 The superior court, which
4 should be a defendant in this case, at
5 that point didn't trip him up, or catch
6 his blatant lying on the stand as to
7 exact content of the posting, as in the
8 above. Incredibly, this state court in
9 del norte went merrily forward
10 further-cuckoo against the claimant,
11 obviously mesmerized by this Satan
12 figure of cop self-aggrandizement.

13 Let me try to re-focus the
14 previous another way for the court:

15 Go to ER, tab 7, hand-paginated
16 no. 1: Plack writes Gimbel hasn't had
17 a ticket for all 2004. It says he hasn't
18 gotten one per his system info for the
19 last 3-plus months, since the posting
20 was Apr. 4, 2004, and this report is
21 being written in and about Apr. 9,
22 2004.

Appendix 112

1 Now go to ER, tab 4: Plack
2 pretends he understands the posting
3 says, "...JUST got a ticket"--{just
4 now}.

5 BUT in ER, tab 7, hand-
6 paginated no. 2, Plack shows us an
7 insane speculation he has used all
8 along, and tries to deceive everyone,
9 and is clearly trying to show us how
10 he based his evidence for his SWAT
11 move to take Gimbel's life from him
12 for near a half decade now, by
13 saying, "But the posting probably
14 says got one years ago..." {+ or -
15 some years or months} ..."so I had to
16 SWAT Gimbel just to make sure I
17 crossed him up by basing it on
18 changing what he really said by 180
19 degrees." In ER, tab 7, hand-
20 paginated no. 2, he is clearly saying
21 "I felt like removing Gimbel's life for
22 near a half decade because I felt like,

Appendix 113

1 so I said the posting said something it
2 did not."

3 1. And how does he figure it
4 probably says "a year ago," (ER, tab
5 7, hand-paginated no. 2), or some
6 length ago, if he *agrees* it says "just
7 now," ER, tab 4?--more visible proof
8 of his lying. 2. Above all else, we
9 catch him *right here* mumbling his
10 rationale he actually used for a SWAT-
11 battery removal of Gimbel's life for
12 near a half decade now, with his
13 exact insane utterance, ER, tab 7,
14 hand-paginated no. 2, more or less,
15 that Gimbel was *really* saying, "I got
16 one some years ago, or way back in
17 the past."

18 Isn't the following exactly the
19 same?:

20 Man in a forum writes at one
21 point, "I've got a blue shirt on today.
22 Cops sure stink, don't they?"

Appendix 114

1 A chief reads the post, doesn't
2 like the part of it, says then, "This
3 guy's *really* saying 'I've got a red shirt
4 on today'. " ("just got a \$5 parking
5 ticket..." vs. "got one years ago,"
6 right?--same thing.)

7 The chief then, insane, his evil
8 ploy building to get this guy says,
9 "And you know, there was this
10 unsolved murder 20 years ago by a
11 guy who fled with a red shirt on...!"

12 The chief then adds up the
13 insane "evidence" of his type of
14 Satanic act, furthering the filthy,
15 insane 'rationale' of his arrest move
16 by saying, "And, elementary...this
17 guy must be free, since he's writing
18 from some computer. They don't
19 have computers in jail, so this must
20 be the guy from 20 years ago still on
21 the loose! And, by these 2 'facts,
22 pieces of evidence,' I now have the

Appendix 115

1 right to SWAT him and take his life
2 from him for near half a decade."

3 Plack is Satan or Satanic at best.
4 You see how he twisted "just got a"
5 to something 180 degree opposite,
6 else?--pretended to everyone to be
7 "taking and understanding the actual,
8 literal statement" at one point, too,
9 obviously a lie--but twisted it exactly
10 180 opposite to something else,
11 which, in reality, was his pretense to
12 form and begin, to base his actual
13 (illegal) operations, to suit his
14 insanity and give him a right to go
15 out and kill someone...he twisted it
16 exactly to "got one years ago" in his
17 filthy, insane brain, ascribing this
18 twisted insanity as the rational and
19 right to crucify a man with a SWAT
20 action, removing all his life,
21 possessions, pursuits, setting him to
22

Appendix 116

1 reviling enslavements, and steadily
2 and daily for near half a decade now.

3 At best, he combined this filthy
4 lying with other "pieces of evidence
5 he knew from the start," such as "the
6 post as expressed would never
7 happen," (ER, tab 2) to form his
8 Satanic base for removing a man's
9 life and pursuits now for near half a
10 decade.

11 For this direct lying, perfectly
12 inconsistent statements, and obvious
13 insanity by this man, chief Plack,
14 who initiated all charges and the
15 arrest of Gimbel which resulted in
16 multiple amendments (1st, 2nd, 4th)
17 of this appellant now removed evenly
18 in combination for near 1/2 decade,
19 this appeal court should find
20 immediately, angrily and with wrath,
21 for appellant in the full amount, and
22

Appendix 117

1 punish the defendants, too, if
2 possible. They can appeal it.

3
4 **ISSUES ON APPEAL**
5 (What issues are you raising on
6 appeal?)
7 **STATEMENT OF TOO-VISIBLE
8 ERROR BY DISTRICT COURT**

8 Plaintiff used some base
9 language in his amended complaint,
10 ((docket entry 52 (filed simultaneous
11 with entries 53 and 54)) and was
12 discharged from all right to seek
13 redress.

14
15 **THE NEXT APPROXIMATE 7**
16 **PAGES FORMALLY ARGUES TO**
17 **SHOW THE ERROR OF THE**
18 **COURT IN DISCHARGING OR**
19 **DISMISSING THE CASE BASED**
20 **ON SOME BASE LANGUAGE IN**
21 **A BRIEF**

21 You have criminal law, and you
22 have civil law. If you look at all
23

Appendix 118

1 practice of criminal law, were you
2 able to find an instance in a criminal
3 indictment where some prosecutor
4 used profanity, "colorful language,"
5 where a victim did, where *anyone* in
6 the chain of the whole process does
7 that, you will see that *there is no use*
8 *of disliked language anywhere that*
9 *negates the criminal charge.* By
10 extrapolation, as all civil cases are
11 exactly about *violations*, civil
12 *violations* are not to be negated,
13 either. The only thing that will
14 negate that criminal charge is due
15 process pertaining to itself:
16 examination of the evidence, the
17 actors, resolved, one way or the
18 other, of itself, by itself. Adjudication
19 has nothing to do, in the practice of
20 criminal law, by every obvious and
21 evident view, with whether some
22 kind of [fucking] "colorful language"

Appendix 119

1 was used in and about the
2 examination of the evidence
3 pertaining to an indictment. Where it
4 occurs, it is dealt with separately in
5 all cases.

6 Now, the reasoning is so
7 simple, it stinks. All civil law is very,
8 very—it's almost exactly the same,
9 as criminal law, and should be....
10 Because it concerns *violations*.

11 The people who do (civil)
12 litigation out here, are The People—
13 themselves. They are plaintiffs—the
14 same as prosecutors. These are not in
15 any wise oblivious to when they've
16 been wronged, and they are there (in
17 litigation) for what they believe is
18 usually to be, a strong reason. A
19 reason every bit as strong as The
20 People themselves, when The People
21 go for it as the prosecution in some
22 district attorney's office. We are

Appendix 120

1 *thinking* people, the same as those
2 people in there purported to be: I am
3 a plaintiff, therefore I am a
4 prosecutor, and because I am an
5 individual among The People. I am
6 one of them.

7 Further, any redress that occurs
8 in a civil case is a punishment.
9 There's no question about it. It is a
10 sanction, a punishment exactly the
11 same; a punishment of exactly the
12 same severity as the removal of
13 freedom in criminal case
14 punishments. Civil case redress
15 mandates the removal of one's
16 financial empire, structure, the
17 removal of one's familial structure
18 occurring in civil litigations; the
19 seizing of cars and impounding of
20 property, houses included. Persons
21 end up paying compensation for their
22 lifetime; that is all but being

Appendix 121

1 executed. This is the removal of your
2 life, the same as going to jail.

3 It makes perfect sense, because
4 civil law is all about *violation*,
5 exactly the same as criminal law.

6 Now, given, as I've shown,
7 reminded, that they don't let
8 language of any kind interfere with
9 looking at the (criminal) indictment,
10 until the indictment is resolved on the
11 merits of its own evidence, all the
12 evidence that can be mustered,
13 examination of its actors and the
14 argument...that is resolved of itself....
15 If there's any kind of a language,
16 "colorful language problem," it's
17 dealt with separately in all cases. We
18 are going to do that here, in the civil
19 case now, too.

20 I was ready for this, were I to
21 have appeared in person in Oakland
22 on the earlier Sept. 25, 2007

Appendix 122

1 appearance scheduled. I had a paper
2 ready to bring with me, and here it is
3 (exhibit A attached to this AOB, at
4 the end). Reading it, I suggest to the
5 court I was not at all oblivious to how
6 certified bar attorneys are rather
7 stifled and herded as to such briefing
8 mannerisms, and that some of my
9 briefing may foment good
10 irksomeness if not certain envy or
11 "jealousy," *including, I presume,*
12 *among some judges who come from*
13 *these ranks of lawyers across time.*

14 By reading it, (exhibit A
15 attached hereto), so you see—and I'll
16 stand by what I've written here—that
17 this civil case must go forth, and the
18 actors, defendants named, must be
19 examined for their deeds, whether by
20 jury trial or summary judgement,
21 until that case is resolved,
22 adjudicated on its own evidence, etc.

Appendix 123

1 The court in C07 0113 SBA has
2 made 2 very clear mistakes for which
3 they should amend: 1. You cannot
4 peremptorily destroy, without my
5 even entering a plea about it, my
6 (constitutional) right to seek redress
7 (accorded in First Amendment) in a
8 civil case, before this federal court, or
9 any court. And, 2. Neither can you
10 concomitantly free actual potential
11 *violators* of the law as if due process
12 for their violations suddenly did not
13 exist, including civil law, in the same
14 act and breath.

15 I think the Supreme Court's
16 going to "find you" on some of this,
17 if you don't start giving me an inch
18 here and there for the
19 obvious...thinking men set all
20 precedent. From my CADS, you see
21 I'm saying this is a tight case of first
22 impression, anyway, having much to
23

Appendix 124

1 do with the newness yet of speech
2 vis-a-vis computers, I perceive.

3 As an item of incidental note,
4 one points out that judge Armstrong
5 appeared to have issued her entire
6 review based on having read no more
7 but the first line of the amended
8 complaint. This is merely to note had
9 she read the first lines of plaintiff's
10 opposition brief in the overall motion
11 she was "considering" (supposed to
12 consider but apparently didn't), titled
13 "Plaintiff's Combined Oppositions to
14 County Defendants' Amended
15 Motion to Dismiss and to City
16 Defendants' Motion to Dismiss
17 Amended Complaint," docket 62, she
18 would have discovered plaintiff
19 significantly striving to ease any
20 concerns judge Jenkins may own, if
21 not console him, and to belabor that it
22 was just a wake up ploy, to aver that

Appendix 125

1 plaintiff is not racist, and to impart
2 that plaintiff is suffering beyond
3 emergencies and other "loud, loud
4 yelps of extreme pain, and time ever
5 dragging on in this state." Whether
6 this would have meant anything to
7 her is unknown. But overlook it *she*
8 *obviously did* as she flew off in
9 vituperation, rather well discarding
10 her judge's robes, basing this act and
11 her order/opine on merely the reading
12 of the first line in amended
13 complaint--apparently something
14 judge Armstrong has admitted (ER,
15 tab 8, Docket 68, pg. 2, line 1, her
16 "Order" filed Sept. 19, 2007).

17 Also, consider the irony of the
18 court's grandiose error pertaining to
19 language: The speech in plaintiff's
20 amended complaint, and elsewhere,
21 (which S.B. Armstrong pretended
22 "issue" with), would be clearly

Appendix 126

1 protected speech in real life. Aren't
2 these the very courts that pretended
3 to accord status of protected speech
4 to enumerated cases in real life?

5 When it's protected, it's
6 protected. No enmitous judge,
7 fantasy-reality-aberrant federal judge
8 has the "right" to start kicking one's
9 constitutional-redress rights down the
10 sewer over speech she simply
11 disliked--when in fact, it's protected
12 speech. A victim/plaintiff has come
13 to her; she has done nothing more
14 then make him exactly more of a
15 victim. She *firstly* freed all his
16 enemies, *then* damned his right to
17 redress (her act is a constitutional
18 provision removed under color of
19 law, and without plea or trial), and
20 *then further* went against some
21 speech that would be protected in real
22 life. That, sir, is ALL INTENT to kill

Appendix 127

1 by this judge, by making
2 plaintiff/appellant a victim
3 FURTHER than the insufferable
4 victimization he already owns (and
5 describes) at the hands of the
6 defendants. They say a lot by her
7 error: that these very "judges in
8 courts of objectivity" are usually
9 more wont to act just like punks, and
10 to play games with people's lives than
11 pay attention to real life.

12
13 **FURTHER JURISPRUDENTIAL**
14 **ERROR: ALSO AN ISSUE ON**
15 **APPEAL: DECORUM IS NOT**
16 **WHY COURTS EXIST;**
VIOLATION IS

17 Firstly, it is true that order in a
18 courtroom is very much possible in
19 determining a plaintiff's described
20 violation, where the prevailing level
21 of decorum is not violence per se;
22

Appendix 128

1 e.g., mere base language in a brief is
2 not violence in a courtroom.

3 In the case at bar (Gimbel v.
4 State of CA et al), the plaintiff
5 claiming himself a victim of violation
6 has, therefore, per the above, been
7 dismissed from a right to seek redress
8 based on "feelings of indecorum" by
9 the judge (use of base language)
10 which did not transcend to violence,
11 or even remotely threaten such.

12 The wield by the judge of such
13 an act--alone--is a violent act upon,
14 and *added* upon, an *already-victim*,
15 and without sufficient base, because a
16 courtroom CAN examine purported
17 complaints short of physical
18 tempestuousness and short of
19 physical, direct obstructing violence
20 present. Base language produces no
21 such physically obstructing premise.

Appendix 129

1 A snipey judge pretends
2 decorum in order to murder a fish
3 from decency, justice and any
4 constitutional right, over that she
5 disliked a comment or two. *On top of*
6 *that*, she went on a rampage freeing
7 defendants who should be under
8 criminal as well as civil indictments.
9 Notice, that because these very kinds
10 of courts are freely allowing these
11 criminal defendants to felony-harass
12 Gimbel for protected speech, they
13 with-impunity slew Gimbel again
14 with *another* case over speech, for
15 speaking merely one time, and the
16 first time-ever to a certain deputy--
17 another case back to back with this
18 one, just recently filed in S.F. district
19 court ((This new one is: Gimbel v.
20 State of CA...(dep.) Villarreal...Del
21 Norte Sheriff...et al), No. C07 5816

Appendix 130

1 EMC, filed recently in S.F. district
2 court, about Nov. 15, 2007)).

3 Decorum is not why courts
4 exists; VIOLATION is: The judge
5 should stick to certain objectivity
6 (purported in her oath of office) and
7 try to sort the VIOLATION the
8 plaintiff, victim, came to her with.

9 ...Not piss out of her mouth and
10 make FURTHER victim of him
11 because she's a dirty little peeve-
12 behavior (and a "federal" peeve-
13 behavior no less).

14 Additionally, did the judge even
15 happen to notice the whopping
16 declaration certifying important case
17 documents submitted simultaneously
18 with amended complaint? Nope, not
19 mentioned at all in her "order."
20 Plaintiff nearly killed himself, in
21 over-the-fringe health preparing it,
22 scrutinizing what he thought was

Appendix 131

1 being asked of him to "cure defects"
2 in his original complaint, and he sent
3 this declaration with the amended
4 complaint, at the very same time.
5 Observe the judge nowhere states
6 awareness of that declaration (ER,
7 tab 8). This judge didn't even notice
8 that truly immense work.

9
10 AFTERTHOUGHT ON PREVIOUS
11 ISSUES ON APPEAL:
12 DEFENDANTS ACTS WERE
13 ACTUALLY RIFE FOR A
14 CRIMINAL AND CIVIL ACTION
15 AGAINST THEM, NOT JUST
16 CIVIL, TO BEGIN WITH

17 Use of base language...does not
18 deter any court in this universe from
19 a criminal prosecution.

20 Additionally, let me square to
21 you my complaint against the
22 defendants is

Appendix 132

1 strictly a criminal thing, via the listen
2 to "my heart," then a civil thing, too.
3 For one, it's the way the system
4 behaves in many able-to-be named
5 cases (e.g. O.J. Simpson: civil +
6 criminal indictments; Robert
7 Blake, "Beretta" TV series, same). As
8 a courtesy to you I only filed a civil
9 case, for there appears not to be a
10 criminal indictment-recourse against
11 such defendants that I've ever been
12 aware of. Only the "rabble" out here
13 is apparently forced to suffer both
14 criminal and civil cases before some
15 hoity toity judges and courts.
16 Agents, deputies for some county or
17 state, despite blatant criminal acts,
18 only seem to invite a civil. What's
19 even more criminal is their utterly
20 appalling "immunity" snivel which
21 usually becomes involved. The
22 criminal violation is there in the

Appendix 133

1 Gimbel civil case against 18
2 defendants, and must be followed
3 through, even if only named or
4 "processed" in the system as a "civil"
5 case.

6 To be sure, courts are notorious
7 for taking huge criminal sanctions
8 against "the rabble," then civil
9 additionally.

10 Additionally, you are saying a
11 court is offended and will not hear a
12 (certain) case because of base
13 language. If that is true, (the issue of
14 offending the judge; aka "the court")
15 *then all I need to do*, by your
16 reckoning, next time I, or anyone, (a
17 very "nifty" little tool and escape
18 you've manifested), come under some
19 criminal indictment, is just throw a
20 little base language out there and a
21 court will shy from it, close the case.
22 Viola, pronto, dismissed, after the

Appendix 134

1 judge merely "read the 1st line."
2 (SBA's order: "The court need not
3 look past the first sentence of
4 Gimbel's 'Amended Complaint' to see
5 that it is...and should be dismissed.":
6 ER, tab 8, hand-paginated pg. 2, and
7 actual pg. 2, of her 3 pg. order,
8 docket 68.)

9 Were you NOT to dismiss some
10 hypothetical future indictment against
11 one, I think one sees one has a pretty
12 clear right to do
13 something...(fantasize in here)...if
14 you don't see what perverse largess
15 you're creating by essentially
16 "approving" a truly criminal act by
17 my defendants-named...that you're
18 just making them each, and as an
19 armed gang who were WRONG,
20 Barabbas-free without any regard to
21 my suffering their criminality.

Appendix 135

1 A combinate removal of
2 multiple amendments across years for
3 no reason (protected speech), and for
4 myriad continuous and multiple
5 speech cases only, and for speech
6 alleged ONLY to cops, as I was,
7 coerced to suffer it, is an
8 OUTSTANDINGLY criminal event,
9 rest assured. I am all but brain dead
10 from it; this I know. I felt it intrude
11 across years and infest me to my
12 dregs, and extract me. I am unable to
13 imagine a court that stupid as not to
14 equate years of wrongful deprivation
15 of multiple amendments ever
16 working together, gnawing and
17 gnashing the soul--as it did and yet
18 does--equate this to a goddamn exact
19 criminal act--and from under color of
20 law, no less!!!

21 In fact, this, per above, is
22 getting even more ridiculous every

Appendix 136

1 time I turn around: I'll tell you what:
2 if any "first ploy" of using base
3 language doesn't keep me free for
4 eternity no matter what you, some
5 court should chance to accuse me of
6 in some future, (should you persist in
7 the perverse scuttle of Gimbel's civil
8 case for same), I'll just tell you I'm
9 immune--a 2nd ploy--a backup
10 perverse arrangement. It's clear if one
11 of these 2 "rights of Satan" don't free
12 me rather immediately, (should you
13 persist in the perverse scuttle of
14 Gimbel's case).....

15 That is, if both of those huge
16 icons, (base language & immunity),
17 taken with edifice and rights, being
18 used to scuttle Gimbel's case now,
19 fail Gimbel in ridding of, gaining
20 freedom against some accusers in
21 some yet-hypothetical future criminal
22 indictment against himself, I don't see

Appendix 137

1 you're telling me anything other than
2 I've got the right to...(fantasize a
3 military action here).... Hey, I can
4 play that perverse shit too, with all
5 the state's toys and hardware.... I
6 don't see you're telling me anything
7 other than I've clearly got the right to
8 smite you with revolution or...if you
9 design to mess with me further on it.

10 Rest assured, you will have
11 created it (should you persist in the
12 insane, perverse scuttle of Gimbel's
13 case).

14 This court must see its way to
15 the full recompense.

16 I know I have won this case as a
17 matter of law. I shall never be
18 fooled.

19
20 CONCLUDING, ISSUES ON
21 APPEAL
22

23

24

Appellant's Opening Brief

cv 07-16966

25

26

Appendix 138

1 Let me conclude on issues to
2 appeal, by pointing out that the court
3 clearly stumbled me to a vast
4 dissertation on the **right** to present
5 my case using some base language--
6 saying that my throat gets cut if I use
7 some. To proceed, prevail on appeal,
8 or any level, I must stop, fend, and
9 deal with the huge stumbling stone
10 just thrown. Given my showing here,
11 that the district court errs
12 significantly in factual further
13 victimization of an original plaintiff
14 over use of some base language in
15 briefs, let me observe the writing
16 effort on appeal could have been put
17 to much better use discussing the
18 subject speech further, and really
19 bringing home that what they did to
20 me for that speech violates the First
21 Amendment and very much so the
22 person. On that, thank goodness I

Appendix 139

1 padded myself with about every
2 observation, cite, quote, real-life
3 event, argument, logic I could think
4 of across the years, *and most of this,*
5 *close to all, is really in all of*
6 *appellant's writings in the civil*
7 *dockets beginning with the original*
8 *complaint.* For an original review of
9 same, of all issues brought up about
10 the speech, (as I've said, an original
11 proceeding in dist. court needs to
12 have ever happened in the first
13 place), I would direct anyone to,
14 including an appeal court, to
15 incorporate here, as if set forth
16 herein, the entirety of plaintiff's
17 submissions in the civil docket. Well,
18 I'm not; I read the rule, but that's
19 what I would do. Maybe you can
20 make an intelligent choice on that
21 one that resurrects some honor to the
22 First Amendment in this beaten

Appendix 140

1 down-to-hell story. My life is now
2 over for 134 words; I guess I never
3 lived; I guess I didn't want my
4 pursuits I had formerly chosen;
5 goodbye, and thank you, Satan;
6 whatever you say. You've forced me
7 to say this, as it looms now as reality.

8 The "royalties" my "cop-
9 publishing agency" (defendants)
10 made off my blood, hide, and torture
11 were infamous. It's so ironic. I'll tell
12 you why: In 1995, after collecting
13 stanzas of my writing across about 5
14 years, I ordered published finally in
15 1999, at the cost of \$8,000 through a
16 self-publishing firm, 3,000 copies of
17 my little book (maybe 8,000 word
18 count or so; uncounted back then;
19 done on manual typewriter). To date,
20 not 1 copy ever sold. But the state's
21 interest in murdering me, royalties,
22 tithes, and extractions off the hide

Appendix 141

1 and time of me for 134 words, hiding
2 the emoticon with it ever and a day,
3 before all, the subject speech of
4 this civil case--now it feels like
5 I've been paying them royalties in
6 blood, in enslavement, the currency
7 of weep, gnash, denial, deprivation,
8 chill, vastly accelerated ill-health,
9 boredom, torture for a lifetime, life
10 savings thrown in the dirt chasing
11 this, refusing yet to eat with Satan in
12 my face--that was OK--that was just
13 dandy with anyone around here.
14 Please get on with the relief sought; I
15 am an emergency.

16 So you see, I "can generate
17 royalties" with my writing; but it's
18 still not for me, only to pay Satan.
19 The genesis of the word "pig" is a
20 total understatement and euphemism
21 in this tale with which appellant now
22 adverts your appeal court. It's irony,

Appendix 142

these "royalties," and the direction they flow, and the fact such "royalties" are illegally coerced by the state, the universe, the gang, all gangs...*and all to come, and have come, from one falsely accused man.*

Thank you, Satan, thank you; pardon me for having thought life might exist somewhere. I didn't mean that now that I've been coerced into your scheme, blind-eyed-working-for-nowhere and nothing, enslavement and system.

WERE ALL THE FOREGOING
ISSUES TO THE APPEAL COURT
RAISED IN THE DISTRICT
COURT?

(Did you present all these issues to
the district court?)

Appendix 143

1 Obviously not. I could not
2 anticipate S.B.A.'s opinion.
3 Additionally, I didn't discover she
4 was a "black person" until after her
5 order.

6 7 SUPPORTIVE MEMORANDUM 8 OF LAW AND CITES OF ISSUES 9 ON APPEAL

10 (What law supports these issues on
11 appeal?)

12 Two things:

13 1. I believe my (formal)
14 arguments just made under issues on
15 appeal are pretty airtight and realistic.
16 I think the court must bow and shun
17 pretenses to have, A., rights to
18 destroy constitutional rights to
19 redress even while, B., freeing a
20 victim/plaintiff's enemies, violators,
21 defendants, who were even acting
22 under color of law!...doing such (A.
23 and B.) over non-violent uses of

Appendix 144

1 some base language in briefs. I see
2 such (my formal arguments) as
3 nighing "a memorandum." Thinking
4 men built computers; thinking men
5 set the first precedent when the first
6 legal case was born; and largely, their
7 arguments and thinking were the only
8 reasons for precedents in come-along
9 new areas of tech and law. Please
10 seek to find that I be treated some of
11 that as a thinking human.

12 2. I said in my 3 pg. "RECORD
13 ON APPEAL; STATEMENT OF
14 THE EVIDENCE," in item 5 therein,
15 attached hereto as exhibit B, (which
16 was sent with the Civ. Appls. Doc.
17 Sheet., the CADS being the entry just
18 after "70" in the case docket, left un-
19 numbered by the court), which was
20 sent among 4 different submissions
21 submitted exactly with the Civ.
22 Appeal Docketing Sheet, (2 sendings

Appendix 145

1 of these 4 are not shown in the civil
2 docket)...I said in this document, in
3 item 5, that I would show 3 real-to-
4 life reasons that support the issues I
5 will raise. (Note: since exhibit B is
6 not mentioned specifically in the civil
7 docket sheet, though I've been told it
8 was received, I will attach it as
9 exhibit B to this AOB, instead of to
10 the excerpts.)

11 Although I realize none of these
12 samples has undergone the grip and
13 decision of a tango through the court,
14 the one involving U.S. Congressional
15 Rep. Mr. Jesse Jackson is about up
16 to muster as "a cite." The whole
17 world watched him. "Rabble" would
18 have been arrested under CA 415
19 ("fight challenge"; AND, profanity)
20 when he called out a congressman
21 who told him to shut up. I've seen it
22 time and again in my life: The cop

Appendix 146

1 says "*You must take the gentleman's*
2 *way in resolving your differences;*
3 *one single fight challenge,*
4 *anywhere... to do so is a violation of*
5 *law.*" Is this not the law? And did not
6 Mr. Jackson break it? Yes. The whole
7 world saw him do it. Legally, later,
8 any so called provocation claiming to
9 have caused the *criminal* utterance,
10 can only be used to "mitigate"
11 degrees of the *original crime*. You're
12 (Jackson) still the one who wanted to
13 kill, kick and maim, resort to it, over
14 the event, the "criminal." Yes, the
15 world, and Calif. saw him do exactly
16 that. No one stepped forward to arrest
17 him, depose him, destroy his last 4
18 years of work, free his enemies to
19 boot, rub it in his face to enhance
20 anywhere, on some other plane,
21 where he might be suffering hugely
22 as a victim in some other matter...as

Appendix 147

1 the judge, S.B.A. so cozily ordered to
2 happen to Gimbel. Nope, it came to
3 exactly as if nothing happened with
4 Jackson.

5 And therefore Gimbel's case, in
6 the face of base language in his
7 briefs--the whole Gimbel complaint
8 and briefs, like Mr. Jackson, should
9 now be just as smooth forward,
10 remain ontrack, as a case and work,
11 life on track--should not even
12 remotely be the S.B.A. exhibit,
13 order, further victimization of
14 Gimbel, even while freeing up his
15 violators...herself to really get
16 at...bash and kill off that
17 victim/plaintiff Gimbel.... (I might
18 think to include a recent Drudge
19 story, too, about a Saudi gang rape
20 victim...get this...who was given 200
21 lashes. Not far off what I felt, by
22 destroying my life's work AND

Appendix 148

1 THEN freeing up Satanic-violators
2 of me on top of that.) Nope, no way.

3 And Gimbel only did some of
4 the base language part of Jackson's
5 exhibit, (see Jackson's "string of
6 profanities" in article) not the rest of
7 the Jackson exhibit.

8 The 3 real-to-life supportive
9 samples of these issues are attached
10 to this AOB as exhibit C (applicable
11 as "memorandum" in the issues at
12 hand, and in this case of first
13 impression, I believe; remember, the
14 first judicial case that ever existed,
15 and, largely the same with a case in
16 any *new* area...is "precedent set by
17 thinking men," in and about "real
18 life," and nothing else).

19 One of the other 2 samples in
20 exhibit C, the one about the U. of
21 Colorado editor, is , basically, as I
22 said in "STATEMENT OF THE

Appendix 149

1 EVIDENCE;...{exhibit B}" further
2 supportive of the very idea that base
3 language is not some soulful,
4 complete drop-dead-of-your-rights-
5 and-work-thing as S.B.A. has
6 attempted; but, rather, a thing where
7 the utterer's life and work goes on,
8 and should, exactly as before--same
9 as Mr. Jackson--just like his.
10 Summation of both of the 2
11 remaining samples and their
12 applicability to the issue being
13 studied is as follows: (from
14 "STATEMENT OF THE
15 EVIDENCE;..." filed, tentatively,
16 (unverifiable) in the court of appeal
17 on Nov. 1, 2007:

- 18
- 19 • One article is of the recent U. of
20 Colorado at Ft. Collins, editor
21 who allowed to use the "F" word
22 to describe Bush in the
23 collegiate paper, keeps his job.
The editor's life goes on, (Bush
himself has used the "S" word
publicly during his term, as you
recall--no repercussions.)

Appendix 150

Gimbel used some base language, and, in contrast, his life (or his life's work in the civil case) is supposed to drop stone cold dead--all of it.

- The other article is a revealing recent study that shows that, were Armstrong to dismiss on base language, it is the very attempt to destroy some of the very tenuously precious fabric of our lives that prospers our team spirit and morales, and the study will show this could equate to an act to demoralize and de-spiritualize us.

RELIEF SOUGHT IN THIS APPEAL COURT

Appellant seeks firmly the full recompense sought. Just reverse the district court and see your way to it. They "can appeal it" if they want, of course. Per Injury and Damages calculated in paragraphs 50-106 in the original complaint, that is 1,360 million dollars. On May 22, 2007 all defendants' attorneys were duly notified that amount would increase

Appendix 151

1 by 10 million dollars for every day
2 forward that plaintiff's possessions
3 were not returned to him with the
4 recompense. Final figure easily
5 computed at time this is accorded.

6 In one alternative relief, the
7 appeal court can focus the district
8 court's error, and remand the entire
9 case to start from scratch with the
10 amended complaint (and declaration
11 and req. for jud. notice filed
12 simultaneously), and all subsequent
13 papers, and be heard in an original
14 proceeding in the district court. There
15 has, as I've pointed out, (pg. 20, line
16 25, elsewhere...), been no original
17 proceeding to date, with a judge who
18 read exactly 1 single line of
19 thousands of pages in the district
20 court, and admitted as much
21 (admitted in her order: ER, tab 8,
22 Docket 68, official pg. 2 of that

Appendix 152

1 order, line 1, her "Order" filed Sept.
2 19, 2007). This "alternative relief"
3 makes very specific that there be a
4 complete start over in the district
5 court on appellant/plaintiff's amended
6 complaint with simultaneous
7 declaration and req. for jud. notice,
8 and all briefs and motions
9 subsequent--to be carefully reviewed.
10 Hell, I had myriad requests out to the
11 district court to decide some matters
12 of law and issue in my Combined
13 Opposition to Motions to Dismiss
14 Amended Complaint (docket 62,
15 Aug. 23, 2007) among lots, lots
16 more. That combined opposition also
17 had some very compelling info sent
18 in a simultaneous declaration (docket
19 63, Aug. 23). What a plaintiff roast
20 I've been to!

21 As an additional addendum to
22 any relief granted in the foregoing,
23

Appendix 153

1 and very much surrounded with
2 interest by this appellant, *we ask the*
3 *Ninth Circuit Appeal Court to hand*
4 *us their own opinion on the subject*
5 *speech* in the case (we all realize
6 appellant can't be tried twice; there
7 should be nothing stopping this court
8 from issuing such an "opinion" on the
9 speech). The district court was asked
10 to do the same, (general reference:
11 amended complaint, docket 52, pg. 2,
12 lines 5-7), but likely never read to
13 that point. Appellant says it
14 again...that such opinions could be
15 counted going forward in this case,
16 and like "votes" maybe help form up
17 the case to degrees.... You could be
18 the beautiful help to any proposed
19 forward mediation and arbitration by
20 this. In fact, all in all, and at every
21 level in a First Amendment-violation
22 civil case, appellant sees it as

Appendix 154

1 improper for the court NOT to issue
2 their thinking on the subject speech
3 before proceeding with any order or
4 opinion. This court might seek to
5 establish a precedent that it is
6 heretofore required before issuing an
7 opinion, so that parties can think on it
8 in terms of where they're going. It
9 would be just that: a comment by the
10 issuing court as to what they saw of
11 its protection, and would never deter
12 a party from the presently established
13 stages (motions, further appeals, etc.)
14 with which a party is empowered to
15 seek redress.

16
17 **ANOTHER COMPLETELY**
18 **SEPARATE CASE, AND FOR**
19 **COMPLETELY NEW**
20 **VIOLATIONS OF PURE SPEECH,**
21 **HAS JUST BEEN INITIATED IN**
22 **FEDERAL DISTRICT COURT;**
23 **SOME OF THE NAMED**
24 **DEFENDANTS IN THIS APPEAL**

Appendix 155

1 CASE ARE RE-UPPED,
2 REPEATING, WITH-IMPUNITY
3 OFFENDERS IN THAT CASE

4 (Do you have any other cases
5 pending before this court?)

6 There are no other cases
7 involving me pending before this
8 *appeal* court.

9 But oh lordy, they seek to kill
10 me for breathing and talking, any first
11 time I do. That was the case with the
12 subject speech, being the same
13 subject speech in this case of appeal--
14 that it was a *first* time Gimbel had
15 ever (allegedly) spoken to the police
16 chief.

17 And *that happens to be the*
18 *exact same thing with A NEW CASE*
19 *in district court.* This new case is
20 about Gimbel's speech to a certain
21 deputy Villarreal's answering
22 machine on May 21, 2006 ("the
23 subject speech," for which Gimbel

Appendix 156

1 was ripped out and put down some
2 more), and was exactly a first-time
3 speak to this deputy! It's where
4 Gimbel says anything at all, even the
5 first time he EVER spoke to these
6 defendants, as in both speech cases,
7 and they come over with all the
8 state's armor and rip him out for
9 good. Then he must bear Satan for
10 the years. You'll never see or feel a
11 gnash, frustration, put-down, denial,
12 life-ripout, pursuits-gone,
13 enslavement without reward, and
14 weep like such further coercion of me
15 to Satan's demands, caused, as this
16 new case. Go read it and weep, at
17 your convenience, a new complaint
18 for violations against the first and
19 2nd amendment, myself again a
20 plaintiff "and prosecutor," case No.
21 C07 5816 EMC, Gimbel v. State of
22 CA,...(dep.) Villarreal...et al, filed in

Appendix 157

1 S.F. district court about Nov. 15,
2 2007 (hefty, w/ decl. and certified
3 papers of proof; complaint and decl.
4 2" thick when nice and flat).

5
6 PREVIOUS CASES BY
7 APPELLANT FILED WITH THIS
8 COURT

8 (Have you filed any previous cases
9 which have been decided by this
10 appeal
11 court?)

12 No.

13
14 Small note: When appellant was
15 removed of his ²\$6,000 computer
16 near 4 years ago in this subject
17 speech case, the ransacking cops
18 overlooked his first, starter computer
19 over in a garbage sack in the corner.

20
21 ² Appellant had owned the brand new \$6,000 machine
22 for only a year when the defendants cast their Satanic
23 eyes upon it.

Appendix 158

1 Thinking (and hoping) earlier he
2 would never have to use it again,
3 appellant hauled it out with about
4 2/3rd's of it's harddrive space at that
5 time still remaining. Appellant has
6 filled that drive across about 4 years
7 to where you see it now (exhibit D,
8 attached to AOB, 1st pg. therein)
9 with not one thing other than court
10 cases to do with this case. He has
11 been crucified upon this machine that
12 could not possibly load any cite
13 software; and, that cannot support
14 encryption to purchase legal research
15 online; and, that takes 20 seconds
16 average to turn a clicked-on page,
17 same as if and when Googling for
18 info (exhibit D, 2nd pg.). Some web
19 pages take as long as 8 minutes or so
20 to load. With a narrow daily window
21 because of severe hampering health,
22 this means "research" via Google or

Appendix 159

1 other is really only about 30
2 comprehensible pages *a day*. The
3 computer crashes in these times,
4 balking at the used space left, nearly
5 10 times a day and has to be
6 restarted. It is not even a computer; it
7 is barely an electronic typewriter to
8 begin with, and run out of dire
9 necessities. Appellant was bombed
10 back to the caves by defendants.
11 Appellant was crucified upon this
12 machine, "tool," for near 4 years
13 now thanks to these illegal actors
14 under disguise of law. Appellant was
15 caused the additional component of a
16 daily travail, agony, humiliation and
17 degrading of appellant, ensured for
18 the next near 4 years to date by
19 defendants, to suffer on a
20 mechanical-electronic anachronism.
21 (General reference: discussion of
22 extreme machine handicaps and
23

Appendix 160

hindrances also discussed, among other places, in docket 1, orig. complaint, exhibit 5, document 1 therein. Also mentioned in docket 36, "plaintiff's opposition to attorney Vrieze's motion..." in and around pg. 11, line 18 to about pg. 12, line 17.)

So, lord have mercy if you feel you may be seeing at some point there are any deficiencies in appellant's writing. He has worked at this machine daily for near 4 years straight now, and done exactly everything for his cases he possibly could with it.

Gentlemen, please have at it.

Dated JOHN GIMBEL,
Appellant/Plaintiff,
in pro se

Appendix 161

EXHIBIT A

As to attorneys' contention of claimant appearing "emotionally involved" in his writing ("diatribe"), or "impugning" the court with some language:

Two things:

... I ask this court:

1. How would one convey feeling oneself a victim, best? Especially as an in pro se-ist. A "rant" can do this. Otherwise stated as: the language of "pure objectivity" might fail to.

2. Yes, I understand an in pro se-ist could, and likely would, ultimately, irk a career attorney where he's using "manuevers," wording, the career-ist can't own, so I do make the following concession for my chosen method in my writings which attempt to depict and convey my victimization

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(in part, having used "diatribes" and other loud language).

I do very much understand the decorum the bar attorneys must follow religiously, and I apologize to the court for any appearance that I'm capitalizing on some "wild differences" in that I'm not a member.

Consequently, I suggest to the court here now that I will succinctly allow that 1 million in "fines" may be levied against me in the case where my full award being sought is exactly met, but not otherwise, and such "fine," appropriation, in the court's discretion, may then be distributed in some way among the opposition attorneys and the court. I must stress I make concession to any fine ONLY in the instance where my full judgement demanded comes to pass. In doing this, I make absolutely no

Appendix 163

1 concession that any of my writing in
2 this case is "wrong." It simply isn't and
3 cannot be proscribed by the U.S.
4 constitution. I accept such "fine"
5 merely to acknowledge their humanity,
6 state, and position they have
7 assumed, and to which they are
8 bound, and to show that someone has
9 given consideration to the boat they're
10 in, the "game" they play.

11

12

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Appendix 164

EXHIBIT B

John Gimbel tentatively, owns a
225 Brevus St. file stamp of Nov. 1, 2007
Crescent City CA my hard copy returned,
95531 not stamped
707.464.5908
Plaintiff, in pro se

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN GIMBEL

CASE NO. : C070113 SBA
RECORD ON APPEAL;
STATEMENT OF THE
EVIDENCE

vs.

STATE OF CALIFORNIA, DEL NORTE
COUNTY SHERIFF'S DEPARTMENT,
JERRY HARWOOD, BILL STEVEN, GENE
McMANUS, MELANIE BARRY, DANA RENO,
ROBERT BARBER, ED FLESHMAN,
CRESCENT CITY
POLICE DEPARTMENT,
DOUGLASS PLACK, GREG JOHNSON, JAMES
HOLT, CALEB CHADWICK, THOMAS
BURKE, DEL NORTE DISTRICT ATTORNEY,
KEITH MORRIS, AC FIELD, MICHAEL RIESE,
DARREN McELFRESH, AND FRITZ
LUDERMAN

Defendants

Appellant's Opening Brief

cv 07-16966

Appendix 165

The appeal will be taken by plaintiff, Title 28 II, Rule 10, based on several points, records and evidence, including the following:

1. The court acted improperly wherein judge Saundra B. Armstrong did not recuse herself on the same grounds as did Martin J. Jenkins (both are black).

2. All original papers and exhibits filed in the district court, including original and amended plaintiff's complaint.

3. A certified copy of the docket entries prepared by the district clerk.

4. The evidence exists, clearly, speaks for itself, that, since to nullify the constitutional right to seek redress is the onus and condemnation of a punishment directly upon one, (in this case upon the plaintiff, when the court closed Gimbel's case), the court acts improperly by nullifying the constitutional right of the plaintiff to seek redress with his complaint without the due process involving a right to a trial to determine, as provided by law

Appendix 166

and rights to speedy jury trials, whether this constitutional right is in fact removable in the name of punishment. It acts improperly, concomitantly, even before that, in not even having allowed a plea on the charges of "colorful language," before mandating *an exact punishment* of deprivation of the aforementioned constitutional right.

5. Instruction will be given the court, as self-evident, that base language occurs at times in the very course of life. The court will be reminded, if not admonished, that no violations per se are dropped in *violative indictments* in the criminal systems, by "courts," no matter who was to use base language in a case there; yet, in the Gimbel case, the court purports right or mandate for some base language to allow to free up automatically the *violative indictments* of 18 defendants accused of serious and pillaging violations in the Gimbel case.

Additionally, three in fact very recent samples will be shown, that the outright

Appendix 167

1 forgiveness of indicted violations for some base
2 language, (as the court attempted with Gimbel's
3 18 defendants), is not at all keeping with the
4 tenor of life itself, and should not be an act of
5 our overseeing-of-life courts. These 3 will be:

- 6 1. The recent Jesse Jackson, U.S. Rep.'s
7 (Illinois) use of profanity during a session
8 on the House floor, even further "fight
9 challenging" his opponent directly ("let's
10 step outside," CA penal 415). That
11 episode came to "life goes on."

12 Absolutely nothing came of it. According
13 to our courts here, (the Gimbel sample),
14 Jackson should have been fired, stopped,
15 removed of all rights. Gimbel's 4 years of
16 work was hit with the hammer of one
17 page of orders, the judge (Armstrong)
18 saying of his 4 years of work she only
19 bothered to read the first line, and Gimbel
20 was suddenly removed like Saddam for
21 the same language Mr. Jackson used.

Appendix 168

2. The recent U. of Colorado at Ft. Collins editor who allowed to use the "F" word to describe Bush in the collegiate paper, keeps his job. The editor's life goes on. (Bush himself has used the "S" word publicly during his term, as you recall--no repercussions.) Gimbel used some base language, and, in contrast, his life (or his life's work in the civil case) is supposed to drop stone cold dead--all of it.
3. A revealing recent study that shows that, were Armstrong to dismiss on base language, it is the very attempt to destroy some of the very tenuously precious fabric of our lives that prospers our team spirit and morales, and the study will show this could equate to an act to demoralize and de-spiritualize us.

The appeal argues there has transpired not even remotely the "justice" due this plaintiff.

Appendix 169

1 Dated _____ s/John Gimbel, in pro se

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Appellant's Opening Brief

cv 07-16966

24

25

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Appendix 170

EXHIBIT C

Published Thursday | August 2, 2007

Lee Terry, Jackson go toe-to-toe on House floor

BY JOSEPH MORTON

WORLD-HERALD BUREAU

• Jackson: Terry was aggressor

WASHINGTON — Nebraska Rep. Lee Terry quickly conceded that his chances of winning a fistfight against Rep. Jesse Jackson Jr. would be "zero."

That assessment was almost put to the test Tuesday night when a heated exchange threatened to turn physical.

It started when Democrat Jackson said, during a contentious floor debate, that Republicans can't be trusted.

Republican Terry responded by telling Jackson to "shut up," then walked over to add that he had found the Illinois lawmaker's comment inappropriate.

Appellant's Opening Brief

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1 Terry said Jackson let loose a profanity-
2 filled tirade.

3 "I'm not going to turn with my tail
4 between my legs," Terry said, "so I just stood
5 there." Then Jackson asked Terry if he'd care to
6 step outside.

7 Jackson, who could not be reached for
8 comment, is a martial arts enthusiast. Photos on
9 his Web site show him clad in a black fighting
10 outfit, whaling on an opponent. Terry has seen
11 Jackson showing off his moves in the House
12 gym and said he believes that Jackson is a black
13 belt.

14 The Omahan said he "respectfully
15 declined the request."

16 "I'd have to say my chances were pretty
17 minimal," Terry said. "I try to keep my sparring
18 verbal."

19 Eventually, Rep. Steve Rothman, D-N.J.,
20 stepped in and suggested that the two head to
21 separate corners to cool off. They did.

22 The argument came out of a dispute over

23

24 Appellant's Opening Brief

cv 07-16966

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26

Appendix 172

the process that Democrats are using to push through proposals on children's health insurance. Republicans decided to vent their frustrations Tuesday night by holding up legislation on agriculture spending. The legislation that started it all Wednesday was pushed through by Democrats, and it adds 6 million lower-income children to a popular children's health insurance program.

The House voted 225-204 to pass the bill, which would add \$50 billion to the State Children's Health Insurance Program.

It would slash federal payments to private insurance companies that cover elderly people under Medicare and shift money to doctors and benefits for poor senior citizens. President Bush has threatened to veto it.

Terry said the whole incident was the result of bad timing. The two men talked Wednesday on the floor and made up, he said.

"We're all big boys," Terry said. "We shook hands and said it's all forgotten and

Appendix 173

1 behind us now."

2 **This report includes material from the**
3 **Associated Press.**

4 Contact the Omaha World-Herald newsroom

5

6 **CSU newspaper editor keeps job,**
7 **admonished for profanity**

8 By Erika Gonzalez, Rocky Mountain News
9 Originally published 06:01 a.m., October 5,
10 2007

11 Updated 06:01 a.m., October 5, 2007

12

13 FORT COLLINS COLORADO J. David
14 McSwane, the editor who caused an
15 uproar for allowing the F-word to run in
16 Colorado State University's student
17 newspaper, will keep his job, a student-run
18 governing board ruled Thursday night.

19

20 Instead of dismissing McSwane from his
21 duties as editor-in-chief of The Rocky
22 Mountain Collegian, CSU's Board of
23 Student Communications decided to
24 admonish him for publishing a profane
25 editorial referring to President Bush.

26

27 The punishment was one of the least
28 severe the board could impose. The only
29 lesser penalty was to dismiss the
30 allegations against McSwane.

31

32 Appellant's Opening Brief

cv 07-16966

33

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Appendix 174

The decision came after a four-hour, closed-door hearing of the board, which includes three faculty members and six students. CSU College Republicans and others had called for McSwane's firing for publishing the Sept. 21 editorial, which simply read: "Taser this . . . F--- Bush, with the expletive spelled out. The editorial was written in response to an incident at the University of Florida, where a student was shocked with a Taser during a forum featuring U.S. Sen. John Kerry.

The board ruled that by publishing the editorial, McSwane had violated standards it and The Collegian had set, which state that: "Profane and vulgar words are not acceptable for opinion writing."

Although the board said it considered the opinion expressed in the editorial protected by the First Amendment, it also acknowledged the impact the piece has had.

In a letter to McSwane announcing its decision, the board wrote: "The editorial has caused harm to The Collegian, Student Media and the university community. It is our judgment that your decision was unethical and unprofessional."

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1 McSwane, who canceled a post-hearing
2 news conference, would not comment on
3 the decision. He has 20 days to appeal the
ruling.

4 While the editorial was credited to the
5 entire Collegian editorial board, McSwane
6 was held responsible because of his
7 position with the paper. He has said that he
approved the piece after hours of debate.

8 "We did not do this to capture headlines,"
9 McSwane said last week. "We did this to
10 spark a discussion about free speech."

11 But the editorial ignited a firestorm of
12 publicity, garnering attention from national
13 news outlets and conservative talk show
14 host Rush Limbaugh. The Board of
15 Student Communications received about
300 e-mails and about a dozen letters
complaining about the editorial.

16 Businesses also pulled their advertising in
17 protest - an action that could end up
18 costing The Collegian and other student-
19 run publications \$50,000. Collegian staffers
20 have taken a 10 percent pay cut as a result
21 of the fallout and the director of CSU's
student media said he is looking at further
cost-cutting measures.

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The board could have opted to fire, suspend or reprimand McSwane for the editorial.

Swearing at work boosts team spirit, morale: research

Oct 17, 2007 08:58 AM US/Eastern

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Breitbart TV

Regular swearing at work can help boost team spirit among staff, allowing them to express better their feelings as well as develop social relationships, according to a study by researchers.

Yehuda Baruch, a professor of management at the University of East Anglia, and graduate Stuart Jenkins studied the use of profanity in the workplace and assessed its implications for managers.

They assessed that swearing would become more common as traditional taboos are broken down, but the key appeared to be knowing when such language was appropriate and when to turn to blind eye.

Appellant's Opening Brief

cv 07-16966

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1 The pair said swearing in front of senior
2 staff or customers should be seriously
3 discouraged or banned, but in other
4 circumstances it helped foster solidarity
5 among employees and express frustration,
6 stress or other feelings.

7 "Employees use swearing on a continuous
8 basis, but not necessarily in a negative,
9 abusive manner," said Baruch, who works
10 in the university's business school in
11 Norwich.

12 Banning swear words and reprimanding
13 staff might represent strong leadership, but
14 could remove key links between staff and
15 impact on morale and motivation, he said.

16 "We hope that this study will serve not only
17 to acknowledge the part that swearing plays
18 in our work and our lives, but also to
19 indicate that leaders sometimes need to
20 'think differently' and be open to intriguing
21 ideas.

22 "Managers need to understand how their
23 staff feel about swearing. The challenge is
24 to master the 'art' of knowing when to turn a
25 blind eye to communication that does not
26 meet their own standards."

The study, "Swearing at work and
permissive leadership culture: when anti-

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social becomes social and incivility is acceptable", is published in the latest issue of the Leadership and Organisational Development Journal.

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EXHIBIT D

Note: Due to resource limitations, other, I am unable to insert Exhibit D into this Supreme Court reformatting booklet: Description, location of original as follows:

The 1st of 2 items in exhibit D was a screenshot of harddrive space at the time of writing, showing 23.8MB of space left. It is available in hardcopy only in the submitted AOB in 07-16966, as it had be deleted for space on my machine, and because subsequent screenshots in Microsoft paint, showing far, far less space becoming available in forward case work, took precedence. The latest preserved screenshot on the machine shows 928KB harddrive

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space remaining (latest appears in this petit. in Appendix 66).

The 2nd item in exhibit D is a screenshot of RAM system resources: when you right click at My Computer (in Windows 95) > Properties > General Tab > showing system RAM at 32MB.

Though I retain the above screenshot on my machine, due to the resource shortage it refuses simply to load into this reformatting document you now read being presented to the U.S. Supreme court. The screenshot is in the AOB in hard copy in the Ninth cir., in cv 07- 16966 as the second item in exhibit D attached to AOB, showing the machine's entire RAM as 32MB.